

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

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5 In the Matter of:

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7 SEARS HOLDINGS CORPORATION,

8

9 Debtor.

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11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 November 15, 2018

17 11:08 AM

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21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: NAROTAM RAI

1 HEARING Notice of Agenda of Matters Scheduled for Hearing on
2 November 15, 2018 at 10:00 a.m.

3
4 Motion to Approve : Debtors Motion for Approval of Global
5 Bidding Procedures (document #429)

6
7 Motion of Debtors Pursuant to Fed. R. Bankr. P. 9006(c) for
8 Order Shortening Notice with Respect to Motion of Debtors
9 for Entry of Order (I)(A) Approving Bidding Procedures for
10 Sale of Sears Home Improvement Business, (B) Approving
11 Stalking Horse Bid Protections, (C) Scheduling Auction for
12 and Hearing to Approve Sale of Sears Home Improvement
13 Business, (D) Approving Form and Manner of Notice of Sale,
14 Auction, and Sale Hearing, (E) Approving Assumption and
15 Assignment Procedures, (II) Approving the Sale of Sears Home
16 Improvement Business in Accordance with the Stalking Horse
17 Agreement and (III) Granting Related Relief (related
18 document(s)450) filed by Ray C Schrock on behalf of Sears
19 Holdings Corporation (document #451)

20
21 Motion to Approve : Motion of Debtors for Entry of Order
22 (I)(A) Approving Bidding Procedures for Sale of Sears Home
23 Improvement Business, (B) Approving Stalking Horse Bid
24 Protections, (C) Scheduling Auction for and Hearing to
25 Approve Sale of Sears Home Improvement Business, (D)

1 Approving Form and Manner of Notice of Sale, Auction, and
2 Sale Hearing, (E) Approving Assumption and Assignment
3 Procedures, (II) Approving the Sale of Sears Home
4 Improvement Business in Accordance with the Stalking Horse
5 Agreement and (III) Granting Related Relief (document #450)
6 11/15/2018, 9:06 AM.

7
8 Motion to Shorten Time : Motion of Debtors for Order
9 Shortening Notice with Respect to Emergency Motion of
10 Debtors for Order Approving Sale of Medium Term Notes
11 (related document(s)642)(document #643)

12
13 Motion to Approve : Emergency Motion of Debtors for Order
14 Approving Sale of Medium Term Notes (document #642)

15
16 Motion to Extend Time / Motion of Debtors for Authority to
17 Extend the Time to Assume or Reject Unexpired Leases and
18 Subleases of Nonresidential Real Property (document #426)

19
20 Motion of Debtors for Approval of (I) Procedures for Store
21 Closing Sales and (II) Assumption of The Liquidation
22 Consulting Agreement filed by Ray C Schrock on behalf of
23 Sears Holdings Corporation (document #23).

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25

1 Motion of Debtors for Entry of an Order Establishing
2 Procedures for Rejection of Unexpired Leases of
3 Nonresidential Real Property and Abandonment of Property in
4 Connection Therewith filed by Ray C Schrock on behalf of
5 Sears Holdings Corporation (document #24)
6 Motion to Reject Lease or Executory Contract / Omnibus
7 Motion of Debtors to
8 Reject Certain Unexpired Leases and Related Subleases of
9 Nonresidential Real
10 Property and Abandonment of Property in Connection Therewith
11 filed by Ray C
12 Schrock on behalf of Sears Holdings Corporation (document
13 #25)
14 Motion of Debtors for Entry of an Order Authorizing and
15 Establishing Procedures
16 for De Minimis Asset Sales and De Minimis Asset Abandonments
17 (document
18 #427)
19 Motion of Debtors for Entry of Order (I) Authorizing but Not
20 Directing the Debtors to (A) Pay Certain Prepetition Wages
21 and Reimbursable Employee Expenses, (B) Pay and Honor
22 Employee Medical and Other Benefits, and (C) Continue
23 Employee Benefits Programs, and (II) Granting Related Relief
24 (document #31)
25

1 Motion of Debtors for Interim and Final Authority to (1) Pay
2 Prepetition Claims of (A) Shippers, Warehousemen, and Other
3 Non-Merchandise Lien Claimants, and (B) Holders of PACA/PASA
4 Claims, and (11) Confirm Administrative Expense Priority for
5 Prepetition Order Delivered to the Debtors Post-petition and
6 Satisfy Such Obligations in the Ordinary Course of Business
7 filed by Ray C Schrock on behalf of Sears Holdings
8 Corporation (document #14)

9
10 Application to Employ Evercore Croup L.L.C. as Investment
11 Banker for the Debtors Nunc Pro Tunc to the Petition Date
12 filed by Paul M. Basta on behalf of Sears Holdings
13 Corporation (document #424)

14
15 Motion of the Official Committee of Unsecured Creditors of
16 Sears Holdings Corporation, et al. for Leave to Redact and
17 File under Seal Certain Portions of the Committee's
18 Supplemental Objection to Debtors Motion for Approval of
19 Global Bidding Procedures and Related Declaration (related
20 document(s)429) (document #699)

21
22 Motion of the Official Committee of Unsecured Creditors For
23 the Entry of an Order Pursuant to Bankruptcy Code Section
24 105 and Federal Rules of Bankruptcy Procedure 2004, 9006,
25 and 9016 Authorizing Expedited Discovery of the Debtors and

1 Third Parties (document #484)

2
3 Motion of the Official Committee of Unsecured Creditors of
4 Sears Holdings Corporation, et al, for Entry of an Order
5 Pursuant to Federal Rule of Evidence 502(d) (related
6 document(s)484) (document #485)

7
8 Motion Pursuant to Fed. R. Bankr. P. 9006(c) and 9007 and
9 Local Bank. R. 9006-1 for Order Shortening Notice with
10 Respect to the Motion for Leave to Conduct Discovery
11 Pursuant to Bankruptcy Rule 2004 (related
12 document(s)609)(document #614)

13
14 Motion for Leave to Conduct Discovery Pursuant to Bankruptcy
15 Rule 2004 filed by Paul M. Basta on behalf of Sears Holdings
16 Corporation (document #609)

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1 P R O C E E D I N G S

2 THE COURT: Okay, good morning.

3 MR. SCHROCK: Good morning, Your Honor.

4 THE COURT: It is still morning. In re Sears
5 Holding Corporation.

6 MR. SCHROCK: It is.

7 THE COURT: Before I begin, I apologize for all of
8 you who waited in line at security. Apparently, they were
9 doing a jury selection today, as well as this case, which
10 doubled the number of people they're used to, and of course,
11 there are real criminals who go through this building, so
12 they're careful with the security. Go ahead.

13 MR. SCHROCK: Okay, good morning, Your Honor. Ray
14 Schrock, Weil, Gotshal & Manges, counsel for the Debtors.
15 I'm here with my partners and colleagues from Weil. We're
16 going to be handling various pieces of the hearing today.
17 Also present, here in the courtroom with me today, are the
18 Debtors' Chief Restructuring Officer, Mo Meghji, the
19 Debtors' Lead Investment Banker, Brandon Aebersold, as well
20 as the Debtors' Chief Financial Officer, Rob Riecker.

21 THE COURT: Good morning.

22 MR. SCHROCK: Your Honor, I know it's been a -- I
23 feel like I've almost accomplished something already,
24 getting through security, so we're going to dive right into
25 it, if it's all right with you. We've got an agenda that we

1 filed with the Court --

2 THE COURT: Sure.

3 MR. SCHROCK: -- and the first item up is the
4 Debtors' global bidding procedures motion. I wanted to give
5 the Court an update, just in the course of presenting a few
6 points on that motion to address the objections that have
7 been raised. Your Honor, I can hold onto this for now, or I
8 do have a -- I have a red line. I think your Deputy asked
9 that we hand red lines up as we're talking about the
10 motions.

11 THE COURT: Is this in addition to the red line
12 that was in the binder that I got yesterday?

13 MR. SCHROCK: Yes. Yes, Your Honor.

14 THE COURT: And is it red lined off that document?

15 MR. SCHROCK: Yes.

16 THE COURT: Okay.

17 MR. SCHROCK: There's just a few changed pages.

18 THE COURT: Okay, that's fine. You can hand it
19 up. Thank you.

20 MR. SCHROCK: Your Honor, first of all, thank you
21 to the Court and your staff for working with us and with all
22 the parties in interest as we prepare for the second day
23 hearing before the Court.

24 Your Honor, for the core parties in interest, I'd
25 just like to highlight a few items here. The Debtors have

1 been extremely busy since we filed for Chapter 11. It seems
2 like it's been longer, but it's just been a month.

3 For the management team, the Debtors, the
4 Restructuring Committee, the Board, it's been a trying
5 month, but it's been a month of a lot of progress. There's
6 been a lot of pleadings filed in this case that have been,
7 I'd say, less than positive about the Debtors' prospects,
8 but I wanted to take a moment to highlight some of the
9 things that we are doing, and we think are doing well for
10 the company right now.

11 THE COURT: Okay.

12 MR. SCHROCK: The Debtors sought protection of
13 this Court, Chapter 11, just a month ago, for a breathing
14 spell to take advantage of the tools available in bankruptcy
15 to attempt to maximize value, and reorganize the Debtors'
16 businesses, if possible. And I do think that point is
17 important on maximizing value. There's so much emphasis on
18 near-term liquidity, that I want you to know that the
19 Debtors and the Restructuring Committee in particular,
20 focused on maximizing value.

21 As to liquidity, the Debtors have been at all
22 times focused and maintained due care on being
23 administratively solvent. They have performed much work in
24 this regard since the last hearing and we are confident that
25 we are, and will at all times, remain administratively

1 solvent.

2 The Debtors are in their most profitable time of
3 the year here in the holiday season, and I think it's
4 important to take a step back and just think about that for
5 a second. Like many retailers, Sears has losses during the
6 first three quarters of the year. The fourth quarter is the
7 exception. It is break-even. The holiday season, and
8 particularly the weeks that are coming up, they are really
9 critical for the company and its ability to reorganize.
10 This is when we have the best sales, the highest margin, the
11 most value is brought into the company during the next
12 several weeks.

13 We focused in many areas over the last month, but
14 we've had a few principal purposes. First, stabilization of
15 the business, the employee base and vendor base; raising
16 incremental Debtor-in-Possession financing; preparing the
17 company for its sale process, with a particular focus on
18 those assets whose value depends on Sears continuing as a
19 going concern; putting two key assets up for sale, the SHIP
20 business, as it's known by the acronym, the home improvement
21 business, as well as the sale of the S-Rack MTN notes.

22 These two assets are unencumbered. We think that
23 we've got good prospects for value on them, and they would
24 be used to fund the Debtors' \$200 million wind-down reserve,
25 which they fought so very hard to obtain at the beginning of

1 these cases, and I think, you know, that carve out is
2 something that's going to be very important as the Court
3 looks at the Debtors and their next steps over the coming
4 weeks.

5 We've also spent a fair amount of time
6 strategizing with the Restructuring Committee around paths
7 to maximize value, not just focusing on near-term liquidity,
8 but focusing on what's the right path for a Debtor with
9 complex, intertwined operations to make sure that we're not
10 taking a step too fast and inadvertently destroying very
11 significant value. And finally, we've been educating our
12 constituents on the opportunities and challenges the
13 business faces.

14 On the stabilization efforts front, we've been
15 very successful. We have ensured a steady flow of goods, we
16 have stabilized the Debtors' vendor base of nearly 12,000
17 vendors. It was a massive task for any company. We have
18 re-established terms with certain vendors, we've worked with
19 the Debtors' employees and management to educate them on the
20 realities of Chapter 11, and the company's views on what
21 it'll take to save the business.

22 It's become clear, I think, to the Debtors'
23 professionals and everybody involved in the case, this is a
24 very proud workforce, they love this company, this is their
25 home, they've raised their families here, and we're here to

1 give them every opportunity to try and save this company.

2 The Debtors have performed above budget and their
3 DIP financing. Through the first four weeks of the case,
4 the Debtors beat the DIP financing budget by about \$289
5 million dollars. The Debtors -- this performance has
6 allowed the Debtors additional flexibility to run a robust
7 marketing process for the junior DIP. The Debtors are about
8 \$27 million ahead of the DIP budget for this week as well.

9 Sales last week are down. The Debtors have
10 solidified their supply base, particularly in the hardline
11 space, which was a challenge bringing that up to speed,
12 where there had been a stop in production with some of the
13 highest-margin sales. That is now flowing again, and we're
14 hopeful that, after the 19th, that that week, we can get a
15 pickup back in sales.

16 We've performed in compliance with our DIP
17 financing order, we're not in default. We enjoy the support
18 of our secured lenders. There's a very substantial secured
19 lender base, as Your Honor knows. It's a very substantial
20 constituent that holds billions of dollars in debt, and
21 again, to read some of the papers in the case, you wouldn't
22 understand that, you know, heading into this hearing.

23 We've worked with a third-party provider of
24 purchase protection insurance for -- after running a
25 competitive process. That's the -- when you buy an

1 appliance at Sears, having the ability to get that purchase
2 protection, it really drives a lot of sales. We think, and
3 we've been talking to all of our constituencies and the
4 committee about it, but we think being able to, basically,
5 allow that through a third-party provider and have that
6 purchase protection coverage is a key profitability driver.

7 We think that it'll also allow the Debtors to
8 minimize administrative claim risk that they would otherwise
9 have by underwriting policies within the estate, on a post-
10 petition basis.

11 We've formed and vetted, with our key
12 constituencies, a key employee retention program and a key
13 employee incentive program. This is an important step to
14 stabilizing the employee base and maintaining key talent.
15 I'd like to thank the unsecured creditors committee for
16 working with the Debtors on that. I don't think that we
17 have formalized support, but I think we're very close. We
18 want to get that motion on with the Court today, so we can
19 at least get it set for hearing.

20 On raising incremental DIP financing efforts,
21 we've run a robust junior DIP financing process that has
22 allowed us to raise another \$350 million dollars of
23 committed junior DIP financing. That hearing is set to be
24 heard before the Court on November 27th. That was a very
25 substantial effort, and yesterday, we filed that

1 comprehensive term sheet, which is led by Great American
2 Capital Partners.

3 The incremental financing substantially is in the
4 form that the ESL financing was in terms of its structure.
5 That is there's a junior lien on unencumbered assets, except
6 for four key assets where there's a 50/50 sharing. The
7 pricing was very competitive, the terms are flexible. It's
8 a little more expensive than the SL financing. We think it
9 was important to get third-party financing.

10 The loan structured as a multi-draw term loan
11 credit facility, so that we're only pulling it down as we
12 would need it, when availability under the other facility
13 gets below \$50 million dollars, which is less expensive.
14 We've also completed the documentation underlying the senior
15 DIP credit facility. We filed it with the Court yesterday
16 at Docket No. 744.

17 We've been preparing the Debtors on their sale
18 processes, and we've also been preparing for if the Debtors'
19 efforts are unsuccessful. We have a very short window,
20 here, through December 15th to try and secure a going
21 concern bid, but we are planning for, and you have to, you
22 know, it's the responsible thing to do, to make plans and do
23 things in the event that things don't go your way, and I
24 wanted to ensure the Court, creditors, everyone, that that
25 is something that's a key focus for the company.

1 We have something that I just want the Court and
2 people to understand about the business. When people think
3 of Sears, they really think about the two retail banners, K-
4 mart and Sears. But there's also a very profitable division
5 called Sears Home Services. This business is a market
6 leader in providing in-home services and warranty
7 protection.

8 It's extremely profitable. It a trailing LTM
9 EBITDA of about \$200 million dollars. That business is
10 highly dependent on Sears continuing as a going concern.
11 We're keenly focused on the fact that if the Debtors were to
12 pivot to an immediate liquidation, this business would very
13 likely suffer immediate, and we think, irreparable damage.

14 We also have other systems, like Parts Direct,
15 which they believe is a good business, also dependent upon
16 the company -- it's entwined with Sears Home Services. We
17 have a delivery company, Innovel, which is substantial. We
18 also -- the company is just so, frankly, very large, that
19 you've missed that sometimes, it's the third largest
20 appliance seller in the United States and we're the number
21 one home service provider.

22 We have filed a motion with a stalking horse bid
23 for the home improvement business, SHIP. The bid is put
24 together with a healthy 15 times EBITDA multiple. That
25 multiple would not have been obtainable without the Debtors'

1 businesses continuing as a going concern.

2 We're also performing analyses and Chapter 11
3 planning surrounding the NOL asset, which is in excess of \$5
4 billion. We're hopeful that when we complete these
5 analyses, can serve as a substantial asset and method to
6 enhance recoveries and build a Chapter 11 plan around.
7 Going into immediate liquidation, we think, would destroy a
8 lot of that value.

9 We're evaluating our substantial real estate
10 portfolio, as there's nearly 1000 leases, Judge. We have
11 very substantial owned properties as well. We're working
12 with A&G and JLL, as real estate advisors on this case, and
13 that's a very substantial work stream.

14 We've made decisions around our store footprint of
15 505 stores. That decision was informed by the EBITDA of
16 those stores, which is either positive or very close to
17 break-even where -- and there's very substantial lease
18 value, we believe, in stores where there was just marginal
19 EBITDA, and we felt it was important to keep those stores
20 open. If we're going to be negotiating with landlords, it's
21 a much different negotiation if you have a store closed
22 versus open and being able to generate that value.

23 We finished an initial review of a go-forward
24 business plan. We've shared it with the creditors'
25 committee. That business plan projects a modest

1 improvement, same-store sales of .6 percent in 2019, and I
2 think it's really important that you understand that the
3 company was almost at breakeven shortly before the petition
4 date on same-store sales. So, we're not shooting for the
5 moon. We think it's a straight-up plan.

6 The committee -- but I think that overall, we've
7 fielded numerous offers for their assets, assembling data
8 rooms and processes related to the sale efforts, but we're
9 mindful of the complex operations of the cases.

10 ESL has also been busy during this time. They've
11 been sending inquiries, diligence inquiries, they've been
12 talking to other parties. We've produced, I think, well
13 over 150,000 pages, the Debtors have, in the course of the
14 restructuring subcommittee's investigation. But there's a
15 tremendous amount of activity on the ESL front.

16 I know that it's easy to cast aspersions,
17 sometimes, and you see that in the paper around the
18 company's major shareholder, but whether people like it or
19 not, ESL, they're the single largest creditor in these
20 cases. They've loaned the company billions of dollars, and
21 they continue to support the company's operations, and the
22 Restructuring Committee's view is that, listen, if there's a
23 buyer and they can save tens of thousands of jobs, we have
24 an obligation to look at this and look at it very seriously
25 and that's what we're doing.

1 And then, finally, we've been strategizing with
2 the Restructuring Committee around value maximizing paths.
3 The Restructuring Committee meets at least three times a
4 week. It's really a full-time job. One of our
5 Restructuring Committee members, Bill Transier, is here in
6 the Court today.

7 But we finished an all-day session this past
8 Sunday where we reviewed a number of items, including the
9 management team's go-forward business plan, a preliminary
10 wind-down analysis, and planning surrounding the potential
11 to satisfy themselves that they're going to remain
12 administratively solvent. The fiduciaries are the
13 stakeholders for everyone in this case, or we're the
14 fiduciaries for (indiscernible) stakeholders in these cases.
15 We're the only party that serves that role. We take it
16 seriously.

17 But we're not here to say, of course, that we're
18 perfect. I mean, that's why we're here. We're here because
19 we need the Court's protection and the Court's help. We
20 need a breathing spell. We needed plan exclusivity. We
21 need the opportunity to form a Chapter 11 plan that
22 satisfies the requirements of 1129, and that's better than
23 liquidation.

24 That's a lot of work that is going on with the
25 Restructuring Committee right now. It's a very serious

1 workstream, and we're intending to work on Chapter 11 plan
2 issues very shortly. We recognize that we have a tough task
3 ahead of us to save the company. We're not blind to that
4 fact. We understand that we're going to give it our all,
5 and it's possible that -- we hope it doesn't happen, but we
6 could not -- that we may not be successful. We have our
7 eyes wide open on this, but there's a lot of planning on
8 both sides of this to drive value.

9 And contrary to what I think the committee has
10 noted in their papers, we really do appreciate everyone's
11 views, and we understand what we're doing. Get consensual
12 cash collateral use, DIP financing, and we have the ability
13 to educate all parties in this cases since the three weeks
14 that the committee has been formed, and that really brings
15 me to the first motion that's in front of the Court today.

16 The level of dialogue between the committee, I
17 think everyone would agree, has been extreme. It's
18 substantial. We talk every day. It's been three weeks,
19 it's been extensive by any measure. It's a lot for anyone
20 to get up to speed on, and we really appreciate that,
21 frankly, more than anyone. I think they're doing their very
22 best to do so.

23 Your Honor, they did file an affidavit. What I'd
24 like to do is just talk a little bit about at least our view
25 on why we don't think evidence is required, but if Your

1 Honor is inclined to take evidence, my suggestion is that we
2 have the global bidding procedures heard on the 27th as an
3 evidentiary hearing, in accordance with the Court's case
4 management procedures.

5 THE COURT: Before you get into that, and I
6 appreciate that the committee objection is significantly
7 different than the other objections to the global bidding
8 procedures motion. But, in reading the Debtors' response to
9 all of the objections, just glancing through this most
10 recent black line of the proposed procedures and order, I
11 just -- bring me up to speed on where the parties are on the
12 objections by other parties. Are there remaining objections
13 by other parties to the global bidding procedures?

14 MR. SCHROCK: Yeah, I'll turn it over to Mr.
15 Singh. He was handling that.

16 THE COURT: Okay.

17 MR. SINGH: Good morning, Your Honor. Sunny
18 Singh, Weil, Gotshal. We think we're generally done with
19 all of the other parties. We haven't received an email, a
20 phone call confirmation, just having heard back, but the
21 most recent changes that we just handed up, Mr. Schrock did,
22 reflect a few additional comments that we got late yesterday
23 after the filing by landlords. It looks like everybody's
24 here, if anybody wants to be heard on those issues.

25 We think we've addressed everyone's issues as to

1 notice and timing and the most recent changes, giving even
2 more time on adequate assurance and cure objections for a
3 go-forward store bid.

4 So, I think we're done, but not every single
5 person has said I'm done. We just haven't heard back from
6 everybody.

7 THE COURT: Okay. All right, so, then, why don't
8 you -- unless anyone really wants to press an objection -- I
9 don't need to hear statements that we agree or I'm reserving
10 my rights or anything like that. I just want to hear
11 whether there are any other objections, besides the
12 committee objection, that we need to deal with at this
13 hearing as well, on the global bidding procedures, that is.

14 MR. DILLMAN: Your Honor, I apologize for that,
15 but we --

16 THE COURT: Why don't you come up by the
17 microphone?

18 MR. DILLMAN: Good morning, Your Honor. Ted
19 Dillman of Latham & Watkins on behalf of Simon Property
20 Group.

21 I think I'm happy to, obviously, let the committee
22 go first, but we would like to be heard on that and not just
23 to reserve our rights.

24 THE COURT: It's a similar type of objection,
25 though?

1 MR. DILLMAN: It's a similar type of objection,
2 Your Honor.

3 THE COURT: All right, fine, and I've read that
4 pleading. Wait, there's --

5 MR. SCHROCK: Oh.

6 MR. SCHWARTZBERG: Your Honor, Paul Schwartzberg
7 for the U.S. Trustee's office. The Debtors were going to
8 make a statement regarding an agreement that we made on the
9 record because we'll be submitting a supplement --

10 THE COURT: On that privacy ombudsman solution?

11 MR. SCHWARTZBERG: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. SCHWARTZBERG: They've agreed they were going
14 to work with us on an order that we would submit to the
15 Court.

16 THE COURT: Okay.

17 MR. SINGH: Your Honor, I can confirm what Mr.
18 Schwartzberg just said, so we're working with them. I think
19 we're going to get an order down as soon as possible.

20 THE COURT: That's fine.

21 MR. SINGH: Yeah.

22 MR. SCHWARTZBERG: Thank you, Your Honor.

23 THE COURT: Okay, so, why don't we address the --

24 MR. SCHROCK: Committee's objection?

25 THE COURT: -- Committee objection and the points

1 raised in support, I guess, by the Simon pleading which --
2 Simon is a member of the committee, as I understand it, too.

3 MR. SCHROCK: Yes. So, Your Honor, I think,
4 bottom line, I think that if the Court were to take
5 evidence, we would obviously, not surprisingly -- not
6 obviously, not surprisingly, we disagree with many of the
7 statements in Mr. Sims' affidavit. I know they have some
8 very large numbers in there. We think it's more like \$11
9 million to get to the end of the year.

10 But, I think that's even before considering the
11 significant degradation in value the Debtors would suffer by
12 turning to an immediate liquidation. But I think it's
13 important, as we said in our response, that's not what we're
14 -- we're not asking for it to continue as a going concern
15 today. There's rights that the committee has to seek relief
16 from this Court if it disagrees with our use of cash
17 collateral or our plan exclusivity or even, frankly, moving
18 to convert.

19 But here, we're just seeking procedures that we
20 think everybody should support, whether you're supportive of
21 the company as a going concern or in a pivot to a GOB sales,
22 it just allows -- they're just procedures to allow the
23 company, frankly, to, among other things, meet the December
24 15th date that's set forth in the Debtors' DIP financing
25 documents to maintain -- to get a fully financed bid by that

1 date.

2 And so, we look at it as, it's really just
3 procedural assistance to allow us to meet those deadlines
4 and frankly, that everybody should be supportive.

5 Now, I can't say that what the committee had at
6 the end of their objection that every single one of these
7 suggestions was unreasonable. Our issue as the Debtors is,
8 listen, that -- we understand that. We're going to continue
9 to work with the committee. That's our job. But, giving
10 them covenants, we have a very complex capital structure.
11 If I start giving the committee covenants around pivoting
12 into a GOB, I think that I'm going to -- I have other people
13 that are standing right behind them, frankly, asking for the
14 very same thing.

15 And what we're really looking at is, just
16 shortened procedures to get a stalking horse bid, to get
17 auctions moving, and just to facilitate, frankly, the
18 company's ability to reorganize and otherwise pivot to a
19 sale.

20 We have been, and we continue to be, in compliance
21 with our DIP financing. There's no notice of default on the
22 docket. We have consensual use of cash collateral.

23 But having these procedures, we believe, approved
24 today will allow us to start the marketing process for some
25 key assets, including with the go-forward stores. If we did

1 delay it to the 27th because the Court thought that were
2 necessary, we could still start. But ironically, that very
3 act would be something that slows the cases down, which I
4 don't think the creditors' committee, if it ultimately,
5 according to their papers, would really like to do. They
6 don't want to see things go slower. They'd like to see
7 things go faster. We're not asking for approval of sales.
8 We're merely asking for approval to act quickly.

9 It's fair to say that, as again, that we disagree
10 with what's in Mr. Sims' affidavit, and if we're put to the
11 test, and we will file an affidavit, I just felt it was odd
12 in response to a procedural motion to get into a debate, and
13 I chose not to take the bait for today on the ability of the
14 Debtors to reorganize as a going concern. That's certainly
15 not our task here today.

16 As for the requests around credit bidding, Judge,
17 I think that, if Your Honor orders that credit bidding is
18 allowed, it has to -- I'm not sure what the large
19 controversy would be around that. We have to have the
20 ability to maximize value and extend deadlines if we need to
21 and consult with the committee.

22 We thought that, from the Debtors' professionals'
23 perspective, we thought that having a case where you're
24 giving a mere 60 days - 60 days - to save the company, we
25 thought that, listen, we're approaching this straight up,

1 right down the middle of the fairway. You can't really do
2 it any faster than that. Even if we were to try to pivot,
3 we really can't do it any earlier than December 15th. And I
4 think there's this concern underlying a lot of the
5 statements in the papers that we're just, you know, going to
6 keep running headlong into something that's not feasible.

7 But that is just not the way the committee, the
8 company, anyone, has really been approaching any aspect of
9 these cases and everybody knows the challenge that's in
10 front of them. We just want the chance to do it as Chapter
11 11 really allows and affords us the ability to do.

12 There's parties asking for groupings of assets.
13 We're marketing -- we're going to work with parties on the
14 right groupings of assets and being able to form a
15 competitive process. But again, I don't think you need in
16 the procedures to specifically lay out how the Debtors need
17 to group assets and what they're going to be able to group.

18 You can't put the whole company up for sale and
19 every single asset and division at the same time. It's not
20 responsible, it's not the right way to maximize value.
21 We've chosen to focus on the go-forward stores and those
22 assets that are specifically, we think, at risk if the
23 company doesn't have a go-forward store footprint. We think
24 that's the right way to maximize value. These procedures
25 merely allow us the ability to have a chance to do that.

1 But if we're not allowed to move forward, and we
2 want to do it on the 27th, we can definitely do that. I
3 just think, Your Honor, that when everybody just takes a
4 step back and looks at a retailer that's in the most
5 profitable quarter of the year and the fact we're working
6 with everyone that we can find a way for the parties just to
7 grant the relief that's requested today. But I'm happy to
8 answer any specific questions you have, Judge.

9 THE COURT: Okay. Well, I did have a couple of
10 questions related to the process. You said that the focus
11 is on the global group of stores.

12 MR. SCHROCK: It is.

13 THE COURT: But this is a question, it does not --
14 I don't know the answer to it, but I'm assuming that, if
15 someone wants to make a proposal by the 15th for some
16 portion of them or some other major asset, they are free to
17 do that?

18 MR. SCHROCK: Yes, Your Honor. In fact, people
19 have put in proposals for assets, even since we've filed.
20 But I think we're going to focus on the go-forward stores
21 and the group --

22 THE COURT: Well, let me just interrupt you on
23 that.

24 MR. SCHROCK: Sure.

25 THE COURT: I mean, there's an auction process.

1 The auction assumes, if you have appropriate bids by the
2 15th, or a bid by the 15th, that you would move ahead to the
3 auction process. Generally speaking, such a process would
4 permit parties to bid on less than the full group, and then
5 you'd consider those bids in the aggregate, as opposed to
6 aggregate bids.

7 MR. SCHROCK: Absolutely. Yes.

8 THE COURT: That's part of the -- this auction
9 process.

10 MR. SCHROCK: Absolutely -- yes. Yes.

11 THE COURT: And, I'm assuming that, facilitating
12 due diligence in that regard is easy, because it's the same
13 group of stores.

14 MR. SCHROCK: That's correct, Your Honor. It's
15 the same 505 stores that are going to be operating.

16 THE COURT: So, what is less clear is the
17 following: there are, clearly, more than one set of
18 potential buyers out there, or funders out there, whose
19 business is not going concern-buying business, but GOB
20 business.

21 MR. SCHROCK: Yes.

22 THE COURT: There are at least three that I'm --
23 you know, that you see all the time.

24 MR. SCHROCK: Yes.

25 THE COURT: And they have friends.

1 MR. SCHROCK: Yes, they do.

2 THE COURT: So, my question is, assume, for the
3 moment, that one or more of them wants to make a proposal
4 along those lines, GOB lines, by the 15th.

5 MR. SCHROCK: Yes.

6 THE COURT: They're certainly free to make a
7 proposal. It's a free country, the Debtors are fiduciaries,
8 et cetera. I guess my real question is two-fold. First is,
9 under these procedures, how would that type of proposal be
10 considered, and then second, maybe it's a subset of that, do
11 the Debtors have the resources to consider such a proposal,
12 or to facilitate such a proposal?

13 I mean, in my experience, GOB proposals are much
14 less uniform than people might think. They have all sorts
15 of variations, depending on risk and reward, and the like,
16 and they're often heavily negotiated. It would seem to me
17 that, given all of the things that the Debtors need to do
18 over this very short period, it may be worthwhile to bake in
19 a type of auction that, in essence, would force anyone who
20 wants to make a GOB proposal to put their best foot forward,
21 i.e., perhaps -- I'll leave this up to the investment banker
22 whizzes, an auction where you say, we'll take the second
23 best one, so everyone has to, you know, make their best
24 proposal.

25 That might, at least, you know, we'll take the

1 second best one to compare with the going concern proposal.

2 MR. SCHROCK: Yes.

3 THE COURT: That might, at least, take some of the
4 administrative burden off all the parties. My impression is
5 that the people who do this for a living act fast, they're
6 sophisticated, they've probably done a lot of wandering
7 through Sears already and run it --

8 MR. SCHROCK: Yes.

9 THE COURT: -- in various scenarios, and that
10 they're capable of doing that. So, really, the time delay
11 is more the negotiation part. So, maybe the company could
12 consider something like that? I'm just getting the reaction
13 of both you and the committee on that. I don't, frankly,
14 feel that a decision one way or the other can be made today,
15 or frankly, even on the 27th. You really need to see where
16 the process goes. On the other hand, I'm clearly guided by
17 case law that says that the whole point of a sales process
18 is to maximize value, and I'm reluctant to cut out a
19 potential source of the highest and best value.

20 MR. SCHROCK: Your Honor, I can say definitively,
21 it was never our intent to not have those types of
22 proposals, and I think we're happy to consider it.

23 THE COURT: I don't think it was. I just want to
24 make sure that --

25 MR. SCHROCK: That it's explicit that we will be

1 considering them? I think it's a good idea.

2 THE COURT: Well, not only that, but that the
3 Debtors have sufficient resources to do it. I mean,
4 notwithstanding that you have a lot of talent focusing on
5 this, negotiating a reorganization, in essence, is a real
6 task, and it involves multiple parties.

7 MR. SCHROCK: I can so personally attest.

8 THE COURT: To do that with simultaneously
9 negotiating a separate path of a potential GOB approach is a
10 lot to take. And what I'm suggesting is, maybe a way to
11 shorten that by putting more of the burden on those who are
12 in the GOB business to, again, put their best foot forward.

13 MR. SCHROCK: Yeah, I think so, Judge, and I think
14 we'd actually have to compare that against what the Debtors
15 are already doing, which is, if they were to run a GOB
16 process, what do they believe the proceeds --

17 THE COURT: Yeah, that's fair.

18 MR. SCHROCK: -- which we are -- yeah, I think we
19 are doing.

20 THE COURT: I'm assuming you'll be doing that
21 anyway.

22 MR. SCHROCK: Yeah, we're doing that anyway, so, I
23 think that -- but, having that type of bid --

24 THE COURT: And you have your own person, who's --

25 MR. SCHROCK: We do, yes.

1 THE COURT: -- quite experienced with that.

2 MR. SCHROCK: Yeah, Mr. Cohen is in the courtroom
3 today.

4 THE COURT: Right. Right.

5 (Cellphone sounds)

6 THE COURT: Okay.

7 MR. SCHROCK: That wasn't me.

8 (LAUGHTER IN THE COURTROOM)

9 THE COURT: No, it was no one in the courtroom. I
10 don't know what that was. So, anyway, I don't know, maybe
11 it JC Penney or someone doing, I don't know. So, I wanted
12 to lay that out, both -- that suggestion out to both you and
13 the committee and Simon to see if we can, maybe, truncate
14 some of the discussion on this.

15 My belief, frankly, is that there are serious
16 missing links in what I've been given by the committee, and
17 I don't have anything from you all, which is fair, and even
18 a 12-day delay is potentially -- costs a lot of money in a
19 lot of different ways, not just the running costs of the
20 company, but other factors. So, my inclination in reading
21 these papers is that we should ensure that the best
22 environment exists to consider all reasonable alternatives
23 without turning everything upside down.

24 MR. SCHROCK: It's certainly a sensible approach.
25 We -- I'll --

1 THE COURT: I think if we can -- I'm sorry, Mr.
2 Schrock. If we can resolve that issue, I think the other
3 issues raised by the committee can probably be dealt with
4 fairly quickly and without evidence. So, I interrupted.
5 You were about to say your reaction to that.

6 MR. SCHROCK: We agree, Judge.

7 THE COURT: Okay.

8 (LAUGHTER IN THE COURTROOM)

9 MR. SCHROCK: That's all I wanted to get out.

10 THE COURT: So, I don't know which one of you all
11 are going to be speaking on this motion, but let me pose the
12 question to you.

13 MR. DIZENGOFF: Yeah, so, Your Honor, Ira
14 Dizengoff, Akin Gump Strauss Hauer & Feld, I don't need the
15 podium, I just needed a second. Your Honor, what we started
16 with was an operating premise that the committee was
17 concerned that the company was hell-bent on a path that we
18 thought just didn't make sense, based on the numbers and the
19 information that we digested.

20 THE COURT: Right.

21 MR. DIZENGOFF: And we laid out for you in the
22 (indiscernible) declaration, this is a decision that costs
23 hundreds of millions of dollars to execute. So, we went to
24 the company and said, I understand you can't just pivot to
25 GOB sales instantaneously, but if you're going to go down

1 this path, and by December 15th, you don't have something
2 that's actionable, what the committee wants, and the
3 committee, I think, rightly deserves, is an alternative
4 that's set forth so that we don't lose time and money.
5 Because, as you said, every day actually does matter. The
6 administrative expense burn associated with this company,
7 whether it's the financings that we have to pay for, the
8 professional fees, just the time, whatever is losing money
9 in this company, costs an enormous amount of money.

10 So, we said, in our pleading on Page 6, we
11 actually said, here's the deliverables, which we should
12 embed in the order, and that would obfuscate the need,
13 actually, to have --

14 THE COURT: Not obfuscate.

15 MR. DIZENGOFF: I'm sorry. Obviate.

16 THE COURT: Eliminate.

17 MR. DIZENGOFF: Eliminate, yes. Not obfuscate.

18 Sorry, I misspoke. If we can get those deliverables, and
19 that's what we ask for, I take Mr. Schrock at his word, and
20 I know this is a mountain of stuff that has to be done, as
21 we in the committee are largely doing a lot of the same work
22 streams to get to a conclusion that we actually think makes
23 sense. We asked for deliverables about a plan that says,
24 here's what the GOB looks like. And, the GOB sales process
25 is very detailed. We asked for a Gant chart, basically

1 giving responsibilities, who's doing what, the timeframe,
2 how everything happens.

3 THE COURT: Well, that's the -- that's from the
4 Debtors' end.

5 MR. DIZENGOFF: Yes.

6 THE COURT: There are third parties who live this,
7 you know, and have probably been thinking about it for the
8 last ten years, and I would like to have it clear that they
9 should feel free to make a proposal.

10 MR. DIZENGOFF: Yeah, I actually think, Your Honor
11 --

12 THE COURT: And not only just a proposal, but that
13 they should appreciate the need to do it in a way that,
14 really, probably skips -- well, you could do it in terms of
15 hours or you could do it in terms of days, but the weeks
16 probably compressed into 24-hour stretches that people
17 negotiate these things, and just go to their bottom line or
18 their -- next to their bottom line. But the Debtor,
19 clearly, and you have your professionals, they should be
20 working together on, sort of, if we run it, how does it
21 look? But, that's not really part of bidding procedures,
22 that's just what people do, and I just want to make it clear
23 that all options are being considered, and that there should
24 be a mechanism to get in best foot forward, third-party GOB
25 proposal. Not that that's the direction that this company

1 will go, but just to have it, and see whether it makes
2 sense.

3 MR. DIZENGOFF: So, I agree with that, Your Honor.

4 THE COURT: Okay.

5 MR. DIZENGOFF: It does make sense to actually
6 have that and require those that are in the GOB business to
7 actually provide bids in that timeframe.

8 THE COURT: With timing and how long will this
9 take --

10 MR. DIZENGOFF: Yes.

11 THE COURT: -- all of that.

12 MR. DIZENGOFF: And we do have, in the data room,
13 that we're going to be opening up. I think there's really
14 going to be information so that parties can place such a
15 bid, you know, for a real response.

16 THE COURT: I just don't want people focusing on
17 going concern falling over the other people.

18 MR. DIZENGOFF: Of course.

19 THE COURT: So, it needs to be worked out, how to
20 handle that process.

21 MR. DIZENGOFF: Your Honor, that would alleviate
22 concerns. We asked for this to be embedded, actually, in
23 this bid procedure's order because although Mr. Schrock says
24 to the contrary, this is not just about procedures, and what
25 the committee's concern was, we can't go down a path that is

1 predestined and predetermined for an outcome that says we're
2 wedded to a 505 store sale path without actually
3 understanding what the alternatives look like.

4 THE COURT: Yeah, I don't think that's what this
5 is.

6 MR. DIZENGOFF: Okay.

7 THE COURT: I think that it's -- it's an approach
8 that, if it works, it would be great, and the company is
9 under understandable time pressure to pursue it, and should
10 pursue it, because it may well work. But you don't want to
11 -- I guess my point, I think this is ultimately your point,
12 is that, if it doesn't work, you want to have laid some
13 groundwork for an alternative without having to, then, lose
14 maybe another month or so before you'd start laying that
15 groundwork.

16 MR. DIZENGOFF: There's no dispute on that.

17 THE COURT: Okay.

18 MR. DIZENGOFF: Your Honor, we asked that it be
19 embedded, actually, in the order, if that's where we go,
20 which would make it a deliverable, if you will, to the
21 creditors committee. I understand Mr. Schrock's part about
22 everybody raising their hand, but like him, we act as
23 fiduciaries for the unsecured creditors, so having that as a
24 deliverable to the committee, we think, makes sense.

25 THE COURT: Well, when you say -- you mean the

1 third -- not the third-party proposals, the company's work
2 plan?

3 MR. DIZENGOFF: Not the third-party, a commitment
4 on the company's part that says, we have a GOB plan, this is
5 what it looks like, here's the dotting the I's, crossing the
6 T's --

7 THE COURT: Is that -- I mean, again, I'm
8 concerned about resources. Is that deliverable? That type
9 of analysis?

10 MR. SCHROCK: Your Honor, we're working on the GOB
11 analysis, but delivering a Gant chart, you know, a full
12 company GOB plan by November 30th, and all of the specifics
13 here, I mean, I'll say it on the record, we're committing to
14 work with the committee on this plan.

15 THE COURT: I mean, to me, to me, I think the
16 relevant date is December 15th, and that's the company's
17 internal analysis of that will be relevant when you get in
18 the other --

19 MR. SCHROCK: Right.

20 THE COURT: -- if there are any other third-party
21 GOB proposals.

22 MR. DIZENGOFF: Yeah, but, what I don't want to
23 happen, Your Honor --

24 THE COURT: You want to see the work happening up
25 to that point. That's fine.

1 MR. DIZENGOFF: Correct. We want to know -- what
2 we don't want to do is show up --

3 MR. SCHROCK: He doesn't want to get it delivered
4 on --

5 THE COURT: I'm not sure what a Gant chart is. I
6 thought that was a shirt, but, you know.

7 (LAUGHTER IN THE COURTROOM)

8 MR. DIZENGOFF: I'm sure they went out of business
9 a long time ago. We can let the professionals work out
10 whether the Gant chart is deliverable or not.

11 THE COURT: Okay. You want serious work done --

12 MR. DIZENGOFF: We want serious work done --

13 THE COURT: -- on an alternative GOB approach.

14 MR. DIZENGOFF: Right, and what we don't want to
15 happen is --

16 THE COURT: That's company-generated --

17 MR. DIZENGOFF: Right, company-generated.

18 THE COURT: -- as opposed to third-party proposal.

19 MR. DIZENGOFF: And what we don't want to happen
20 is, December 15th come around and they say, well, we're not
21 quite ready and we're going to march forward with the 505
22 store sales path, and that's another month before we
23 actually see what a GOB plan actually looks like.

24 THE COURT: Well, I think it's --

25 MR. DIZENGOFF: Because that's burning \$100

1 million dollars. So, we need to have this in real time, we
2 need to -- as Ray knows, we're pressuring them to get us a
3 lot of information and digesting it, and I know they're
4 working full steam ahead, but this is a critically important
5 decision that commits the company to a path that will cost
6 hundreds of millions of dollars with every delay. So, I'll
7 give you a for example.

8 THE COURT: Well, yes and no. I mean, it -- you
9 can't do a GOB process for a company this big by snapping
10 your fingers.

11 MR. DIZENGOFF: I agree. I agree, we couldn't it
12 instantaneously, but every month delay will cost our
13 clients, out of unencumbered assets --

14 THE COURT: Unless you're kind of working on
15 parallel paths.

16 MR. DIZENGOFF: That's right.

17 THE COURT: Right, okay.

18 MR. DIZENGOFF: And that's what we're looking for,
19 is that commitment embedded in the order. Your Honor, one
20 of the --

21 MR. SCHROCK: I can commit it on the record.

22 MR. DIZENGOFF: Just a procedural thing, why this
23 kind of bubbles up. The deadlines for those things are
24 embedded in the order, but the company has the right to move
25 those deadlines. We ask for committee consent to do that

1 for precisely this reason.

2 THE COURT: I think that's --

3 MR. DIZENGOFF: Every time you go past it --

4 THE COURT: -- it's too -- I have to keep on top
5 of this, so I think -- I'm not going to defer that right or
6 veto right to anyone in the case. It should be aired with
7 me.

8 MR. DIZENGOFF: Agreed with that.

9 THE COURT: Okay.

10 MR. DIZENGOFF: So, can I suggest one other thing?
11 Perhaps this will actually help alleviate some of our
12 concerns as well. We ask for a check-in date with you, Your
13 Honor, call it December 17th, if those bids are due on the
14 15th. Let's just come back to Court and tell you where the
15 lay of the land is.

16 THE COURT: Yeah, that's fine.

17 MR. DIZENGOFF: Yeah, I think that's useful.

18 THE COURT: If you can get a --

19 MR. DIZENGOFF: Well, we'll talk to your --

20 MR. SCHROCK: We have the hearing on the 20th.

21 THE COURT: Yeah, there's a hearing on the --
22 there's an omnibus hearing on the 20th. I think -- I talked
23 to Ms. Lee this morning. I think there's actually a date
24 between the 17th and the 20th.

25 MR. DIZENGOFF: Okay.

1 THE COURT: I think you all -- that's fine to have
2 that type of check-in date.

3 MR. DIZENGOFF: Okay. That's --

4 MR. SCHROCK: I think that we also have a hearing
5 on the 18th, so.

6 THE COURT: Yeah, I think that was the -- yeah, I
7 think that was the date, so. Maybe it'll be the 18th.

8 MR. DIZENGOFF: I'm sure we can find time to check
9 in, Your Honor.

10 THE COURT: Okay. I think on the baked into the
11 order point, I guess I would rather do it a little more
12 generically than is laid out in the committee motion. I
13 think, basically, it should say something along the lines
14 of, the Debtors will prepare a Debtor-run going concern --
15 an analysis for a Debtor-run GOB sale, and will frequently
16 and periodically update the committee on that process.

17 MR. DIZENGOFF: Your Honor, if you say it, it
18 doesn't need to be in the order, so I'm --

19 THE COURT: Well, okay. All right.

20 MR. DIZENGOFF: -- that's good enough for me.

21 MR. SCHROCK: All right, fine.

22 THE COURT: Well, Mr. Schrock is committed to it,
23 too.

24 MR. DIZENGOFF: He's committed to it.

25 MR. SCHROCK: Again.

1 THE COURT: Okay. So, on the other -- why don't
2 we -- so, I think that means we don't need to have an
3 evidentiary hearing, at this point. On the other points
4 that the committee has raised, you all have -- the order has
5 been moving since -- even since the committee objection with
6 the proposed committee comments on the order was filed. So,
7 what, if anything, is open, at this point on those -- on the
8 other aspects of the committee objection?

9 MR. DIZENGOFF: Your Honor, I'm not sure I've kept
10 up with all of them, because they're fast and furious in
11 terms of the changes that have happened. We had three kind
12 of global issues, and then we can talk about the micro
13 wordsmithing stuff. Issue one was what is actually being
14 sold and when, which I think you addressed a little bit,
15 which is how to bucket assets, and then looking at
16 alternatives and having a GOB bid as well. So, the order is
17 going to have to be significantly changed to embed that into
18 the order.

19 THE COURT: Well, I think what we need to say -- I
20 mean, you've identified 505 stores.

21 MR. SCHROCK: We have, Your Honor.

22 THE COURT: I think that the order should make it
23 clear that the Debtors will entertain offers for less than
24 those --

25 MR. SCHROCK: Yes.

1 THE COURT: -- and will so structure the auction
2 so that those can be made and then you could consider them
3 as a group, compared to any offers for the -- a bigger
4 number, a larger number, or the total number.

5 MR. SCHROCK: We'll do that.

6 THE COURT: And Mr. Schrock's gone on record that
7 the company will entertain offers for other assets too, but
8 I don't think that's really part of this auction process. I
9 think it has to be tied to those 505 stores, although,
10 again, industry buyer X can say, I want 250 of them, and
11 industry buyer Y can say, I want 150 of them, and then the
12 two of them are paying more than whoever bids for the 505.

13 MR. SCHROCK: Yeah, and your risks are, I think,
14 you know, related, but somewhat separate, you know, the
15 Sears Home Services, we expect, also will be an asset that
16 will be looking to market -

17 THE COURT: Part of this process or?

18 MR. SCHROCK: Separate. They could bid for Sears
19 Home Services as part of this or separate.

20 THE COURT: Well, I think we should make that
21 clear, then, too.

22 MR. SCHROCK: We are -- we do. We have a process
23 letter, Your Honor, that outlines that.

24 THE COURT: Okay.

25 MR. DIZENGOFF: Okay, I'm not sure we've seen the

1 process letter. The normal parlance would be there'd be
2 some kind of confidential information memorandum that would
3 kind of spell this all out, that is how the process -- and
4 then we can understand exactly what you're selling and what
5 the timeline is and what people are bidding on them. So, if
6 we can get the bankers together on that and agree to that, I
7 think that resolves --

8 THE COURT: Well, I think the timeline is clear.
9 I think it's just what's in the package, and --

10 MR. DIZENGOFF: Yeah, I understand what the
11 deadlines are.

12 THE COURT: It's just, what's in the package and -
13 -

14 MR. DIZENGOFF: Which, there's no clarity on it.

15 THE COURT: Well, I --

16 MR. DIZENGOFF: Other than just saying it's 505,
17 right?

18 MR. SCHROCK: We have a process letter. We're
19 happy to share it with you. We'll work with you on what the
20 package looks like.

21 THE COURT: I just -- I guess that maybe the
22 missing link, then, is those who are interested in making
23 bids should know what the process is.

24 MR. SCHROCK: Yes. Of course.

25 THE COURT: So, you should --

1 MR. SCHROCK: These are just the procedures, so we
2 didn't -- you know, the procedures contemplate there'll be a
3 notice for each specific type of sale that we're going to
4 run under the global procedures, and so, there'll be a
5 process letter and, for appropriate ASIM that'll be going
6 out, explaining for a relevant asset sale procedure.

7 THE COURT: All right, but your investment bankers
8 are quite capable, and they've probably been beating the
9 bushes.

10 MR. SCHROCK: Yes.

11 THE COURT: But there are always people who just
12 are interested, particularly with a name like Sears. And I
13 want to make sure that, assuming I approve these procedures
14 today, they understand that they can lob in bids for -- it
15 sounds like almost anything there, is what you're saying.

16 MR. SCHROCK: Your Honor, so, for each specific
17 sale that were to take place under the procedures, yes, we
18 will send out -- we'll file a notice that will explain,
19 here's what's for sale, here's the timeframe for considering
20 -- for the 505 store sale, we're going to have a process
21 letter, and we can file it, frankly, with the Court, that it
22 will just explain exactly what's for sale and when we're --
23 you know, how we're considering the bids, considering how
24 much time it's --

25 THE COURT: All right. So, I think that should be

1 put in the procedures --

2 MR. SCHROCK: Okay.

3 THE COURT: -- so that they'll understand that, so
4 they'll know that's the thing to look for.

5 MR. SCHROCK: We'll make that clear, Judge.

6 THE COURT: Okay.

7 MR. SCHROCK: That was definitely the intent.

8 THE COURT: Okay.

9 MR. DIZENGOFF: Okay, Your Honor. Two other
10 points to raise. One as it relates to the ESL potential
11 credit bid. I think the procedures, the way they're set up,
12 and again, I'm trying to keep up with the flow of the
13 changes to it, is if they do anoint ESL as a stalking horse,
14 they have to come back to Court as an insider.

15 THE COURT: Right. Correct.

16 MR. DIZENGOFF: So, there's no prejudgment on
17 whether they're entitled to breakup fees or expense
18 reimbursement, or even the ability to credit bid.

19 THE COURT: That's how I read it.

20 MR. DIZENGOFF: Okay.

21 THE COURT: Including the last point. And you
22 well know that I have more than -- many times held that, if
23 there's some legitimate issue, either about what the
24 collateral is that's in the package that's being bid on, or
25 about the claim or the lien, I require people who want to

1 credit bid to show that they have the cash to back it up, if
2 it turns out that's a real issue. So, I mean, I don't think
3 that's any secret to ESL, or anyone else that wants to
4 credit bid.

5 MR. DIZENGOFF: It's not a secret to us.

6 THE COURT: Okay.

7 MR. DIZENGOFF: So, we've articulated those
8 concerns as well.

9 THE COURT: Okay.

10 MR. DIZENGOFF: Okay, so that's --

11 THE COURT: On the other hand, you can't just say,
12 I don't like the way they look, and so, therefore, they have
13 to have the cash available.

14 MR. DIZENGOFF: Yeah, of course, understood. As
15 you know, Your Honor, there are -- there were, I think, five
16 asset dispositions, 15 financings that were done in the
17 years leading up to it.

18 THE COURT: We've said enough on this topic. I'm
19 just --

20 MR. DIZENGOFF: Yeah, fine.

21 THE COURT: -- I want to be clear that there
22 should be a little bit more than just that in an objection
23 to unfettered credit bidding.

24 MR. DIZENGOFF: And of course there will be.

25 THE COURT: Okay.

1 MR. DIZENGOFF: Of course. The last point to
2 raise with you, Your Honor, which I think you've already
3 highlighted is not going to be an issue, is the extension of
4 the bid deadline. So, we'll have a check-in with the Court
5 sometime during the week of December 17th --

6 THE COURT: Right.

7 MR. DIZENGOFF: -- but our concern is the bid
8 procedures, as drafted, allow the Debtor to extend that
9 deadline without committee consent. If you want to embed
10 the committee consent, that's fine. If we all agree that it
11 makes sense, fine. If not, they should have to come back to
12 you.

13 THE COURT: I think it's the latter.

14 MR. DIZENGOFF: Okay and that would address our
15 concerns.

16 THE COURT: That extension should come back to the
17 Court, unless -- maybe there's -- maybe you could build in a
18 mechanism that if no one disagrees --

19 MR. DIZENGOFF: Right, if we could agree, fine.

20 THE COURT: -- we don't have to go back to Court,
21 you know.

22 MR. SCHROCK: I think we said consultation.

23 MR. SINGH: And Your Honor, we have consultation
24 rights, and I think we said that anybody can be heard on an
25 expedited basis.

1 THE COURT: No, but what I'm saying is --

2 MR. SINGH: You're saying if it's --

3 THE COURT: -- particularly if you're having more
4 than one sale, I don't need to have a hearing on it if
5 everyone is on board with saying that, you know, fine, a
6 week's extension because someone has to close one loop with
7 their financing or something is -- that's fine. But that's
8 not giving anyone a veto, that just says you don't have to
9 come to Court.

10 MR. DIZENGOFF: Understood. Okay.

11 THE COURT: Okay.

12 MR. DIZENGOFF: That's the highlights. We'll have
13 to look at the rest of the language to make sure it's --

14 THE COURT: Well, on the rest of the -- I don't
15 want to -- I mean, again, timing's important here.

16 MR. DIZENGOFF: Yeah.

17 THE COURT: I -- I'm looking at -- so I think
18 those changes will have to be made, and before you submit
19 the order, you need to run it by counsel to make sure that
20 they're consistent with what's been said on the record
21 today. I'm just looking at the rest of the comments, here.
22 I think most of them do go to that -- those points. I think
23 you worked out when it is that people get these bids, right?

24 MR. SINGH: Yes, Your Honor. Your Honor, just to
25 help bridge the gap, just for -- I know the Akin team is

1 looking, the order that we filed with our reply, which I
2 believe they have, two days ago, that's -- with all the
3 changes. The only incremental changes that have been made
4 were a few changes around timing of adequate insurance,
5 which we filed last night. We've got change pages only.
6 I'm sure if I hand them a copy, it'll take them about ten
7 minutes to go through it and confirm that those are just
8 additional changes.

9 THE COURT: Right.

10 MR. SINGH: So, everybody's seen it. It's all
11 been filed publicly and there's not a ton else -- much else
12 there at all, and then it's just the couple of changes Your
13 Honor outlined this morning regarding filing the process
14 letter on the docket after we confer with them regarding the
15 assets to be sold --

16 THE COURT: Right.

17 MR. SINGH: -- as well as that the extension
18 beyond just the particular December 15th deadline requires -
19 -

20 THE COURT: Come back to Court.

21 MR. SINGH: Yeah, unless the parties all agree it
22 makes sense.

23 THE COURT: Unless the consulting parties are in
24 agreement.

25 MR. SINGH: Right, the consultation parties are on

1 board with that, and we'll obviously add a clarification
2 language that, in the bid process notice that Mr. Schrock
3 mentioned, that not just going concern bids are being
4 considered by the Debtors.

5 THE COURT: Yes.

6 MR. SINGH: So, I think that's really it, Judge.
7 There's not --

8 THE COURT: Okay.

9 MR. SINGH: -- there's not much else. Or anything
10 else, excuse me.

11 THE COURT: I think there was a suggestion that
12 the auction be videotaped. There should be some record of
13 it.

14 MR. SINGH: Yes, of course, Your Honor. It's
15 going to be transcribed.

16 THE COURT: Right, okay.

17 MR. SINGH: Of course. And/or videotaped, just,
18 you know.

19 THE COURT: Whatever's more efficient.

20 MR. SINGH: One way or the other, there will be an
21 accurate record --

22 THE COURT: That's fine.

23 MR. SINGH: -- that's going to be submitted, of
24 course.

25 THE COURT: Okay. All right, I had one question

1 on -- for the parties to be thinking about on the stalking
2 horse point, that the \$200 million-dollar carve out, if you
3 will, is obviously really important here.

4 MR. SINGH: It is.

5 THE COURT: From what you said earlier, it's
6 possible that a big chunk of that will already be obtained.
7 But, I'm assuming, if there's a credit bid, the Debtors
8 don't really benefit from that, so that's an issue in terms
9 of evaluating bids.

10 MR. SINGH: Yes.

11 THE COURT: Okay. All right.

12 MR. SINGH: But we're focused on it, Judge.

13 THE COURT: Okay, very well. All right, so, does
14 anyone else have anything further to say on the order -- the
15 request for an order approving global bidding procedures?
16 Okay.

17 MR. TABACHNIK: Thank you, Your Honor. Thank you.
18 Douglas Tabachnik for certain of the taxing authorities
19 entities is, I think, the way we called it on the docket.

20 THE COURT: Okay.

21 MR. TABACHNIK: We're working through issues here,
22 and we want to make sure that it's not quite -- it doesn't
23 get left between the cracks, but there are a number of ad
24 valorem taxes that are secured by liens imposed by statute.

25 Texas is kind of unique that way, and so we've got

1 a bunch of language that we're still parsing through that
2 needs to make sure that -- and this doesn't get left behind.

3 THE COURT: This is just a procedural order.

4 MR. TABACHNIK: Yes, but --

5 THE COURT: Any order I enter approving a sale is
6 going to say that all valid and enforceable liens shall
7 attach to the sale proceeds in the order of their priority.

8 MR. TABACHNIK: And certainly -- and the order
9 that we looked at also says it's subject to the DIP loan,
10 you know, order that's going to be entered at some point.

11 THE COURT: Okay.

12 MR. TABACHNIK: But to the extent that there is
13 language that needs to be put in here that reserves those
14 rights and doesn't leave them behind, I just raise it.

15 THE COURT: Anyone who has a lien has a lien. I
16 don't want to -- I read the objection. It seemed to me that
17 it was really going to be covered by whatever sale orders
18 get entered.

19 MR. TABACHNIK: All right.

20 THE COURT: And nothing is being taken away from
21 any lienholder in these procedures as far as I can see.
22 They're supposed to give anyone with an interest in the
23 property notice and --

24 MR. TABACHNIK: To the extent that they're
25 advertising that sale is free and clear of all liens,

1 encumbrances --

2 THE COURT: Right.

3 MR. TABACHNIK: -- you know, which is a little bit
4 in anticipation of an order to be entered later on --

5 THE COURT: Right.

6 MR. TABACHNIK: -- we want to make sure that issue
7 is accounted for. That's all.

8 THE COURT: What -- why -- that's the whole point
9 of 363(f).

10 MR. TABACHNIK: Yes, but we're not doing that
11 here. We're saying that upfront in the sale procedures
12 order that this is going to happen before it's happened, and
13 that's the only thing.

14 THE COURT: But are you saying that 363(f) doesn't
15 apply to your clients?

16 MR. TABACHNIK: No, no, no.

17 THE COURT: So what's the -- I don't get it. I'm
18 not following. I'm sorry.

19 MR. TABACHNIK: No. There are -- I'm not saying
20 anything of the kind.

21 THE COURT: Right.

22 MR. TABACHNIK: I'm simply saying that there are
23 liens here that don't go away, and --

24 THE COURT: But they could be shifted to the
25 proceeds.

1 MR. TABACHNIK: Well, I guess they could as long
2 as the proceeds are segregated. That's correct.

3 THE COURT: Right.

4 MR. TABACHNIK: Yes.

5 THE COURT: Okay. Okay. Well, look, the Debtors
6 are well on notice that that's what you'll want in a sale
7 order where your collateral's affected. So if there's
8 collateral in Texas, you know.

9 MR. TABACHNIK: It's a unique state because the --

10 THE COURT: Well, in many ways.

11 MR. TABACHNIK: -- lien's attached to personal --
12 yes, in many ways. I've never seen, you know, a state that
13 has tax laws quite like this. But it's unique in that way.

14 THE COURT: Okay. All right.

15 MR. TABACHNIK: So it attaches to personalty as
16 well as realty, and that's the distinction between --

17 THE COURT: Right. No, but the Debtors are on
18 notice of that, so they -- you know, when they're
19 structuring the sale of stuff in Texas, they have to be
20 careful to preserve your lien.

21 MR. TABACHNIK: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. TABACHNIK: Yes.

24 THE COURT: In the proceeds, which means that
25 there needs to be some way to trace the collateral.

1 MR. TABACHNIK: Yeah, but there's some -- yeah.
2 To some extent, though, the real property and the assets may
3 not necessarily -- it -- I don't know that 363 supplants the
4 local state statute in this regard.

5 THE COURT: I have a feeling it does.

6 MR. TABACHNIK: Okay. I will take your word for
7 that.

8 THE COURT: Texas has not yet seceded.

9 MR. TABACHNIK: Yeah. That's an issue.

10 THE COURT: Well, they did once, but they
11 regretted it.

12 MR. TABACHNIK: Yes, Your Honor.

13 THE COURT: Okay. All right.

14 MR. TABACHNIK: Thank you, Your Honor.

15 MR. SINGH: Your Honor, I'm only rising just
16 because when we do have two sale motions, the de minimums
17 asset procedures and the GOBs.

18 THE COURT: Right.

19 MR. SINGH: We do have the appropriate taxing
20 language.

21 THE COURT: Okay.

22 MR. SINGH: This is just procedure, so, you know,
23 that's why we don't have it.

24 THE COURT: Okay. All right.

25 MR. DILLMAN: Your Honor, again, Ted Dillman of

1 Latham & Watkins on behalf of Simon Property Group. I'll be
2 very brief. I think you went to the heart of our concern,
3 which was really about knowing what's up for sale when.

4 THE COURT: Okay.

5 MR. DILLMAN: So just one very minor point that I
6 would like to ask. We take certainly the, you know, Mr.
7 Shock and the Weil team at their word that they're going to
8 be transparent in the process, but as we stand here today,
9 we actually don't know which stores are in the 505 stores.
10 And, you know, Simon and a number of other landlords -- we
11 put this in our papers -- are, of course, interested and
12 natural purchases -- potential purchase of properties that
13 are associated with their malls.

14 THE COURT: Right.

15 MR. DILLMAN: And so as we stand here today, we
16 actually don't know whether or not our -- the stores we are
17 interested in are part of the 505 or not. And so we'd just
18 ask that that process letter include which stores they are
19 selling.

20 MR. SHROCK: That would be a good idea. We have
21 to tell people what we're selling.

22 MR. DILLMAN: Okay.

23 MR. SHROCK: We agree.

24 THE COURT: Okay. Very well.

25 MR. DILLMAN: I'll sit down. Thank you, Your

1 Honor.

2 THE COURT: I mean, actually, before you sit down,
3 I do want to say this. Simon's one of them. There are
4 players in this case that are wearing more than one hat, so
5 they and the Debtors need to be careful in what they share
6 with each other.

7 You know, you mentioned transparency, and that's
8 all well and good, but if the Debtors are dealing with Simon
9 as a prospective bidder, they're obviously not going to be
10 sharing other things with Simon, or they're going to want to
11 make sure that the people from Simon that are getting
12 reports sort of overall strategy or GOB alternatives are
13 walled off.

14 MR. DILLMAN: Your Honor, that's clearly
15 understood. And actually, I'm standing here for Simon.
16 Simon is a committee member, but the committee discussions
17 are really not being had with our involvement.

18 THE COURT: Okay.

19 MR. DILLMAN: We're very mindful of the various
20 roles that we have here in not crossing those lines. We've
21 discussed this with Akin, and I know Ron Tucker, who is the
22 (indiscernible) committee member is here, has been on many
23 committees, and is very mindful of the need to step off and
24 recuse himself whenever --

25 THE COURT: I'm sure Simon has been through this

1 drill before.

2 MR. DILLMAN: -- whenever that becomes appropriate
3 or necessary.

4 THE COURT: Okay.

5 MR. DILLMAN: Thank you.

6 THE COURT: Okay.

7 MR. SHROCK: Your Honor, just to add to that, I
8 mean, we -- you know, Simon has already submitted, frankly,
9 an unsolicited JV offer for some properties. They're not
10 completely overlapping, but we've talked with the committee,
11 and we are being very mindful of -- you know, on the real
12 estate front in particular -- that, you know, we're really
13 dealing with that primarily on a professional-eyes-only
14 basis.

15 THE COURT: Okay. Okay. So I -- having reviewed
16 all the pleadings on this, and based on the record of
17 today's hearing -- will grant the Debtors' motion for
18 approval of global bidding procedures as well as the -- I'm
19 sorry -- enter those procedures with the proposed order
20 provided that it's revised to reflect the movements that
21 I've made today that have been laid out on the record.

22 MR. SHROCK: Thank you very much, Your Honor.
23 We'll revise it accordingly.

24 THE COURT: Okay.

25 MR. SHROCK: Share it with relevant parties and

1 then submit it.

2 The next item on the agenda is related to the
3 bidding procedures for the Sears Home Improvement business,
4 and I'll cede the podium to Ms. Marcus.

5 THE COURT: Okay.

6 MS. MARCUS: Good afternoon, Your Honor.
7 Jacqueline Marcus, Weil, Gotshal & Manges on behalf of Sears
8 Holdings Corporation and its affiliated Debtors.

9 As Mr. Shrock noted, number 2 on the agenda --
10 while number 2 on the agenda is related to number 3, which
11 is the substantive motion, number 2 is the Debtors' motion
12 for shortened notice with respect to their motion for
13 approval of bidding procedures --

14 THE COURT: Right.

15 MS. MARCUS: -- and related relief.

16 Under the amended case management order, Your
17 Honor, our calculation is that the SHIP motion was required
18 to be filed on Thursday, November 1st. Due to some final
19 negotiations with our stalking horse Service.com and delay
20 in finalizing a final form of asset purchase agreement, we
21 were unable to get the motion filed on that day and instead
22 filed it on the morning of Saturday, November 3rd, a little
23 after 9 a.m.

24 The Debtors submit that in light of the fact that
25 the instant motion seeks approval of procedures rather than

1 the approval of any particular sale at this time, and due to
2 the urgency of proceeding with the SHIP sale before there is
3 further diminution in the value of the asset, the Court
4 should grant the order shortening time and allow u to move
5 forward with the SHIP motion.

6 THE COURT: OKAY. We might -- my -- some judges
7 do it differently. They'll grant the order shortening time
8 when it's submitted ex parte. My practice is to schedule
9 the hearing on it because things can happen in between then
10 and the hearing, and I think they did hear, including a
11 revision to the agreement, which was negotiated. It seems
12 to me -- and no one has said to the contrary -- that there's
13 been sufficient notice for this motion.

14 MS. MARCUS: Thank you, Your Honor.

15 THE COURT: So I'll grant that motion to shorten.

16 MS. MARCUS: Thank you. Number (indiscernible) on
17 the agenda is the actual motion itself. As noted in the
18 motion, the SHIP business is being treated separate and
19 apart from the global bidding procedures that Your Honor
20 just approved because the Debtors and their advisors
21 concluded that the SHIP -- the sale of the SHIP business --

22 THE COURT: It's S-H-I-B?

23 MS. MARCUS: S-H-I-P.

24 THE COURT: P. S-H-I-P. Okay. All right.

25 MS. MARCUS: Hopefully that's what I've been

1 saying.

2 They concluded that the sale had to occur on a
3 more expeditious basis due to the nature of the business and
4 the fact that the commencement of the Chapter 11 case was
5 already having a profound effect on the value of the
6 business.

7 In addition, the SHIP business was extensively
8 marketed over the past year, and the Debtors were confident
9 that most interested parties had already had a head start on
10 considering the acquisition of the business and doing
11 diligence in connection with it.

12 As noted on the agenda, the only remaining
13 objection to the motion is the objection filed by the United
14 States Trustee, and we believe that we have resolved that,
15 as Mr. Schwartzberg referenced earlier.

16 THE COURT: That's on the privacy --

17 MS. MARCUS: On the ombudsman. Yes, Your Honor.

18 THE COURT: Okay.

19 MS. MARCUS: But for the record, I thought I'd
20 give a very brief summary of the terms of the stalking horse
21 agreement --

22 THE COURT: Okay.

23 MS. MARCUS: -- as well as run through some of the
24 changes to the proposed order.

25 Your Honor, under the stalk -- under the asset

1 purchase agreement, the stalking horse is Service.com. The
2 cash purchase price is \$60 million. There will be an
3 assumption of liabilities, including the purchaser's payment
4 of cure costs on executory contracts and unexpired leases
5 that they identify for assumption up to a maximum \$5
6 million.

7 The purchaser will also assume certain obligations
8 related to SHIP's employees up to a maximum of \$2 million.

9 In the event that Service.com is not the
10 successful bidder after the auction and alternative
11 transaction closes, Service.com is entitled to be paid a
12 breakup fee equal to 1.5 percent of the cash purchase price,
13 or approximately \$900,000.

14 The proposed timetable laid out in the bidding
15 procedures, Your Honor was large developed in light of the
16 purchaser's desire to close on the acquisition as soon as
17 possible to minimize damage to the value of the franchise,
18 and so that we could conduct the auction and have the sale
19 hearing before the holiday weeks of December 24th and
20 December 31, which we believe would be inconvenient for
21 potential bidders as well as the Court.

22 So if the Court grants the relief requested in the
23 motion today, competing bids would be due on December 11th
24 or approximately three and a half weeks after entry of the
25 order. An auction, if required, would take place on

1 December 13th, and the sale hearing to consider the approval
2 of the sale, whether to the stalking horse bidder or to
3 another bidder, would take place on December 18th, 2018.

4 There were other responses filed with respect to
5 the motion. There were several reservations of rights. I
6 don't believe I need to address those here. I know your
7 views on reservations of rights, so we can just move on.

8 After we filed the motion, the Debtor received
9 comments to the asset purchase agreement, the bidding
10 procedures, and the bidding procedures order from counsel to
11 the creditor's committee, and counsel to the DIP ABL agents
12 and the pre-petition ABL agents. As a result of discussions
13 and negotiation among those parties and the purchase,
14 attached to Exhibits A and B respectively to the Debtors'
15 response are clean and blacklined copies of the revised
16 bidding procedures order, including the bidding procedures
17 that are attached there too.

18 There are a lot of people here, and there are no
19 objections. I'm happy to walk through the changes if you'd
20 like me to, but I'm also happy to skip it in the interest of
21 time.

22 THE COURT: Okay. Well, I -- I -- there's one --
23 the one point I wanted to raise -- it seemed to me that at
24 one part of the revised documents, it was recognized that
25 there should be a different deadline for contract parties on

1 adequate assurance and for cure if they weren't previously
2 designated as being assumed and assigned in the event that
3 someone else won the auction. I don't think that comes
4 thorium in the schedule of important dates and deadlines
5 that's in the order.

6 MS. MARCUS: We can clarify that.

7 THE COURT: Yeah. I think it should be -- in each
8 place where there's the deadline, you should maybe at least
9 have a footnote that says that, you know, it's the later
10 deadline if either a -- I'm sorry. It's the later deadline
11 for adequate assurance if someone other than stalking horse
12 wins the auction, and it's the later deadline for cure and
13 adequate assurance if a contract is designated that had not
14 previously been designated.

15 MS. MARCUS: Thanks, Your Honor. We will -- we
16 will definitely take care of that.

17 THE COURT: Okay.

18 MS. MARCUS: I can't imagine anybody would object
19 to that.

20 THE COURT: Okay.

21 MS. MARCUS: And that was to take into account the
22 fact that there is time to, as you said, additional
23 contracts, and a successful bidder might choose a different
24 --

25 THE COURT: Right.

1 MS. MARCUS: -- group of contracts.

2 THE COURT: Right. So does anyone have anything
3 further to say on this motion?

4 MR. DEGROFF: Your Honor, just for the record, Ira
5 Dizengoff, Akin Gump Strauss Hauer & Feld LLP, post-counsel
6 with the committee. we are okay with this motion.

7 THE COURT: Okay.

8 MR. DIZENGOFF: Just wanted you to know.

9 THE COURT: As somewhat modifying it --

10 MR. DIZENGOFF: Correct.

11 THE COURT: -- in light of the discussions. So I
12 will grant the motion like the last one. It lays out
13 procedures that, in light of the Debtors' particular
14 circumstances are designed to maximize the value of this
15 asset in a reasonable sale process. And also provide for
16 sufficient notice to parties of interest who are directly
17 affected by the process, including lienholders and contract
18 parties.

19 MS. MARCUS: Thank you, Your Honor.

20 THE COURT: Okay.

21 MS. MARCUS: The next item, Your Honor, on the
22 agenda, again you have number 4 and number 5. Number 4 is a
23 motion to shorten notice with respect to the Debtors'
24 emergency motion for an order approving the sale of
25 medium-term notes, also known as MTNs, and that's ECF number

1 643.

2 There's no question, Your Honor, that this motion
3 requested unusual relief. At the time it was filed, we were
4 asking the Court to schedule a hearing on four calendar
5 days' notice due to an incoming ISDA action of the debt of
6 Sears Roebuck Acceptance Corporation, which we refer to as
7 SRAC, that had been scheduled for November 14th.

8 Shortly after we filed the motion to shorten time,
9 we learned that the ISDA auction had actually been postponed
10 to a date, and I'll put it in quotes "no earlier than
11 November 26th." As a result, and in light of the fact that
12 we already had an omnibus hearing scheduled for today, we
13 notified the Court and filed a notice of adjournment,
14 postponing our requested hearing today.

15 One objection has been filed to the motion for an
16 order shortening time, and that is the objection of Cyrus
17 Capital Partners as ECF number 722, which is to both the
18 order shortening notice and the substantive motion.

19 Cyrus contends that the order shortening notice
20 should be denied because there's no longer any urgency to
21 proceeding apace given that the CDS auction has been posted.

22 But Cyrus ignores the following important facts.
23 As of now, no one knows exactly when the ISDA auction will
24 take place, and if the Debtors are going to maximize the
25 value of the MTNs, they have to run a sale process and close

1 a sale transaction before the ISDA auction, all of which
2 takes time, especially given the upcoming holiday week.

3 Cyrus claims, and I quote, "The sale motion does
4 not provide sufficient information to properly evaluate the
5 relief of the Debtors seek." That's in their objection on
6 page 3. If Cyrus had sufficient time to file an 11-page
7 objection to the motion and the 6.5-page single-spaced
8 submission to the ISDA determinations committee, setting
9 forth a litany of reasons why they contend the MTN should
10 not be included on the final list of obligations eligible to
11 participate in the ISDA auction.

12 Moreover, in its challenge to the ISDA
13 determinations committee's inclusion of the MTNs on the
14 supplemental list of eligible securities, Cyrus alluded to
15 the absence of court approval of the sale as a reason that
16 ISDA should reverse its decision regarding the MTNs.

17 Notably, both the creditor's committee and the DIP
18 ABL agents and the pre-petition ABL agents support the
19 relief requested in the substantive motion and in the motion
20 for the order shortening time. Given the forgoing, the
21 Debtors request that the Court grant the order shortening
22 time and consider the motion today.

23 THE COURT: Okay. Is the counsel for Cyrus here?

24 MR. KRELLER: I am, Your Honor.

25 THE COURT: Okay.

1 MR. KRELLER: Good afternoon, Your Honor. Thomas
2 Keller of Milbank, Tweed, Hadley & McCloy appearing on
3 behalf of Cyrus Capital Partners, LP.

4 THE COURT: Afternoon.

5 MR. KRELLER: Your Honor, just for context, Cyrus
6 Capital is a significant creditor holding claims across the
7 capital structure of Sears against many -- against a large
8 number of the Debtors, several hundreds of millions of
9 dollars' worth of claims in terms of both direct secured and
10 unsecured claims and guaranteed claims as well.

11 THE COURT: Okay.

12 MR. KRELLER: And, Your Honor, it is also -- in
13 the nature of full disclosure, Cyrus Capital is also a
14 participant in the CDS market on the Sears CDS agreements.

15 THE COURT: Okay.

16 MR. KRELLER: Your Honor, on the -- on shortening
17 time, and I'm happy to -- I'm happy to talk about both
18 motions, but I'll start with the shortened time motion.

19 Your Honor, as counsel for the Debtor has
20 indicated, the auction has now been pushed to no earlier
21 than November 26th. I would still submit, Your Honor, that
22 the notice that was given, a motion that was filed on a
23 Friday night ahead of a Monday holiday weekend, we're really
24 standing here with two business days' notice of that -- of
25 that motion. And frankly, the notion that we could file a

1 brief in the time that we did is just function of people
2 working around the clock, not the adequacy of the notice.

3 I think, Your Honor, I think there's also
4 questions here about whether --

5 THE COURT: Well, but on the timing point -- hold
6 on. They could have the auction on the 26th, and I think my
7 next day in this case is the 27th, so that wouldn't work
8 unless they're able to have the auction subject to court
9 approval, which I don't know if that's been explored. I
10 would assume -- I would assume not because people want to
11 know what they're buying.

12 MS. MARCUS: That's exactly right, Your Honor.
13 We've been told that that wouldn't work.

14 MR. KRELLER: Your Honor, my response to that is I
15 understand the -- I understand how the calendar works on
16 that.

17 THE COURT: Right.

18 MR. KRELLER: What I would say is there are
19 complexities to this transaction, which we set forth in our
20 objection.

21 THE COURT: Well, let's go into those. I just --
22 I think it's -- the real issue, to me, is whether I should
23 authorize it today or not at all because I just -- it seems
24 to me that we won't know a whole lot more about -- even if I
25 were able to schedule a hearing, you know, next Monday or

1 Tuesday, you know, two or three business days from now, it's
2 probably the same issues that you raised. And it wouldn't
3 make sense to schedule a hearing after that because it could
4 be preempted by the auction.

5 And as I read the papers, the Debtors basically
6 have to have their own auction before the auction. I mean,
7 they have to have their proposed broker decide who they're
8 -- who they're going to sell it to.

9 MR. KRELLER: Your Honor, I think in terms of -- I
10 think you've accurately articulated the sequence of events,
11 and so I'm happy to jump into the heart of the transaction.

12 THE COURT: Okay.

13 MR. KRELLER: Frankly, to the extent I can
14 because, Your Honor, if you look at the motion -- well,
15 actually, let me step back, Your Honor. I'm going to gather
16 from your comments that you -- you've had an opportunity to
17 read our objection.

18 THE COURT: Yes.

19 MR. KRELLER: So, Your Honor, the concerns about
20 the underlying transaction really don't come through in the
21 motion because the motion contains so little information
22 about the basics of this transaction. And I think that the
23 way to attack this is not to look to the motion because the
24 motion doesn't really say much of anything, and ask ourselves
25 some fundamental questions about what's going on here, about

1 the magnitude and the complexity of these inter-company
2 claims, about who are the sellers? We don't even know who
3 the sellers of the MTNs, Your Honor, are.

4 There's a -- there's a motion that's filed with --
5 by the collective Debtors, but it doesn't say who the
6 Debtors are who are seeking to sell these, and it also
7 doesn't say anything about the position of SRAC, which
8 itself is a Debtor, which is the obligor under the MTNs.

9 And, Your Honor, that estate is keenly -- or ought
10 to be keenly -- interested in what happens here because when
11 you think about these claims, Your Honor, we don't know what
12 they are. There are no schedules on file. It's very early
13 in the case. They're simply intercompany notes that were
14 issued. That's what the motion tells us. They were issued
15 by SRAC, to whom we don't know. Some Debtors, unidentified,
16 and Sears Re, which is a non-Debtor entity which apparently
17 hold about a billion four face amounts of the MTNs.

18 We don't know -- so we don't know which Debtors
19 hold these notes. We don't know what they were issued for.
20 We don't know what SRAC received in exchange. We don't know
21 anything about the validity, the priority, the magnitude of
22 these claims, and we don't know anything about what SRAC --

23 THE COURT: Well, it -- when you say -- I don't --
24 they're unsecured notes, right?

25 MR. KRELLER: They're unsecured intercompany

1 notes, Your Honor.

2 THE COURT: Right.

3 MR. KRELLER: And in --

4 THE COURT: So, I mean, doesn't that say what the
5 priority is? They're unsecured notes. Let me ask it
6 differently. What other debt does SRAC have? I'm not --
7 I'm looking over your shoulder at the Debtors. I mean, it
8 -- does it -- is it obligated on all the secured debt?

9 MS. MARCUS: Yes, Your Honor. Yes, it is.

10 THE COURT: And what -- what type of business does
11 it have? I mean, is it -- is it a -- is it a business with
12 material assets?

13 MS. MARCUS: Your Honor, it was a financing arm of
14 the Sears -- the broader Sears company.

15 THE COURT: Right. Is it owed money then by other
16 Sears entities?

17 MS. MARCUS: It may actually be owed money, but I
18 think --

19 THE COURT: But that would be unsecured too,
20 right?

21 MS. MARCUS: Yes. Your Honor, I think that these
22 issues are all real obfuscating, and I'm --

23 THE COURT: Well, I'm just -- I'm just trying to
24 -- I mean, I just want to make sure I understand the facts.
25 I mean, if SRAC had -- you know, if SRAC owned the 505

1 stores, for example, I would -- I guess I would understand
2 why there might be hesitancy to sell off claims that other
3 Debtor entities might have against it under these notes
4 because maybe they would be recovering a meaningful amount
5 from SRAC.

6 On the other hand, if SRAC really doesn't have
7 assets other than unsecured claims against the other Debtors
8 that are behind the secured debt, and the Unsecured
9 Creditor's Committee is in favor of this, it would seem to
10 me that, you know, that's a different way to analyze it,
11 which is maybe it's not that big a deal.

12 MS. MARCUS: I think that's right, Your Honor.
13 The Debtors believe that the value to be received as a
14 result of the sale of the medium-term notes before the
15 auction is in excess of what their place in the capital
16 structure would otherwise warrant. And the creditor's
17 committee, as you noted, is on board with the proposed
18 transaction.

19 THE COURT: Okay. And the notes are -- I mean,
20 the notes are -- there are -- they're on paper, right?
21 They're not claims. It's a note that says --

22 MS. MARCUS: They're --

23 THE COURT: -- X million is owed to Sears Company
24 X for -- by SRAC.

25 MS. MARCUS: They are notes issued pursuant to an

1 indenture, and I think Mr. Gadsden is standing up because he
2 represents the indenture (indiscernible).

3 THE COURT: Right, and I read that pleading also.
4 We've got to turn to that before we finish with this motion,
5 but I guess I'm not -- I mean, it's an overused phrase, but,
6 I mean, these notes are what they are, and that's what
7 people who buy them know. You'd better come over to the
8 microphone, though, Mr. Gadsden.

9 MR. GADSDEN: James Gadsden, Carter Ledyard &
10 Milburn LLP of the attorneys for the Bank of New York Mellon
11 Trust Company, N.A. as indenture trustee.

12 THE COURT: Right.

13 MR. GADSDEN: So the Bank of New York Mellon is
14 the trustee for the SRAC indenture.

15 THE COURT: Right.

16 MR. GADSDEN: One unique feature about this
17 indenture is Section 6.8, which is quoted in our papers,
18 which says that so long as these notes are held by an
19 affiliate, they're entitled to no distribution under the
20 remedies article of the indenture.

21 THE COURT: Right.

22 MR. GADSDEN: So I just -- because we're talking
23 about what are they. I think that's an important feature to
24 --

25 THE COURT: No, that was clear from your pleading,

1 and then there was the other point about the alleged typo.

2 MR. GADSDEN: Yes, Your Honor.

3 THE COURT: So I do want to turn to that before
4 we're done, but -- although that point may be worth raising
5 now. I think the analysis that the Debtors and the
6 committee have made is that the sale of these notes now is
7 going to result in a higher recovery than if they're just
8 left where they are. And that may, though, adversely affect
9 SRAC, including -- based on the point that Mr. Gadsden for
10 the indenture trustee just raised. On the other hand, you
11 know, as King Lear said, nothing from nothing is nothing.
12 And if you don't -- you know, if there's so much debt ahead
13 of them at SRAC, it doesn't really matter whether they
14 become obligations that SRAC actually has to pay out on or
15 not.

16 MR. KRELLER: Your Honor, I guess a couple of
17 responses to that. One, there's absolutely no evidence to
18 suggest that there is no recovery to the unsecured claimants
19 at SRAC, including those that would sit pari with the
20 intercompany MTN notes. You have to base that
21 conclusion on, Your Honor.

22 THE COURT: Well, I mean --

23 MR. KRELLER: There's not -- there's nothing in
24 the record.

25 THE COURT: I just asked. I just asked. I'm told

1 that SRAC is just a financing arm that finances unsecured
2 debt to the other -- to the other Debtors.

3 MR. KRELLER: Your Honor, no. There is out --
4 there are third parties like Cyrus who own other SRAC notes.
5 There's about \$75 million of --

6 THE COURT: No --

7 MR. KRELLER: -- retail holders of SRAC notes.

8 THE COURT: No, but those are the creditors. I'm
9 talking about the asset side of the balance sheet of SRAC.

10 MR. KRELLER: I understand, Your Honor, but I
11 think you actually have to -- I think you have to think
12 about the claims side of it because what happens here --

13 THE COURT: Or you're going to be diluted. I get
14 that.

15 MR. KRELLER: We're going to be -- we're going to
16 be diluted by \$2.4 billion worth of --

17 THE COURT: But again, if it's -- if --

18 MR. KRELLER: -- SRAC note claims, Your Honor.

19 THE COURT: If you're not going to get anything
20 anyway, then what -- does it matter?

21 MR. KRELLER: If that is true, yes, but that's a
22 supposition that there is no value of SRAC.

23 THE COURT: Well, do you have anything -- well,
24 you've lent -- or your clients have lent hundreds of
25 millions of dollars to this company. Do you have anything

1 to tell me about what it has besides intercompany claims on
2 an unsecured basis?

3 MR. KRELLER: Your Honor, I don't know the answer
4 to that. That's why --

5 THE COURT: They didn't do their due diligence
6 when they were making their investment in SRAC notes?

7 MR. KRELLER: Your Honor -- Your Honor, I'm
8 standing here as the lawyer for the client who received this
9 motion a few days ago.

10 THE COURT: Well, I'm sure the client instructed
11 you to object for a reason. If there's a reason -- if they
12 have an asset, I understand the point. If they have a real
13 asset that's not collateral -- are the notes themselves
14 collateral, by the way? I mean, does the lender -- secured
15 lender group have a lien on these notes?

16 MS. MARCUS: Only pursuant to the DIP financing,
17 Your Honor. So they were what we call previously
18 unencumbered assets under the DIP facility, which is why the
19 proceeds of these notes will be used to fund the wind down
20 account.

21 THE COURT: All right.

22 MS. MARCUS: Your Honor, perhaps a better way to
23 proceed -- I have a proffer that I can offer that may answer
24 some of the questions, and if I may offer the proffer --

25 THE COURT: Okay.

1 MS. MARCUS: -- that might help.

2 THE COURT: Is it someone's proffer who's here?

3 MS. MARCUS: Yes, it is, Your Honor.

4 THE COURT: Okay. All right.

5 MR. KRELLER: Your Honor -- Your Honor, this is --
6 this is precisely why, actually, the -- having the hearing
7 on this timing doesn't make sense. If we're going to do
8 this as an evidentiary matter --

9 THE COURT: If it's --

10 MR. KRELLER: -- it really ought to happen next
11 week.

12 THE COURT: I --

13 MR. KRELLER: This is --

14 THE COURT: All right. We will, and your client
15 will have to come here and tell me why it thinks that it's
16 going to be diluted. I want to know. I don't want you to
17 just to lob something at and tell me sort of sotto voce, and
18 we're participants in the CDS market, which I think may be
19 the reason they're objecting.

20 MR. KRELLER: Your Honor --

21 THE COURT: By the way, they should no longer
22 interfere with the Debtor's right to sell these notes
23 without running risk of violating the automatic stay.

24 MR. KRELLER: Your Honor --

25 THE COURT: Enough. I'm going to have the hearing

1 the day before Thanksgiving. Mark it off. It'll be in the
2 afternoon. You're done.

3 MR. KRELLER: Thank you. Thank you, Your Honor.

4 THE COURT: You're done. But I'm going to take it
5 quite seriously at that point.

6 MR. KRELLER: Thank you, Your Honor.

7 THE COURT: There can be inquiry into your
8 client's motives on this too.

9 MR. KRELLER: Your Honor, I'm -- I will be -- I'm
10 certainly prepared to deal with that now.

11 THE COURT: Good.

12 MR. KRELLER: I'll be prepared to deal with it
13 then.

14 THE COURT: Good.

15 take: I would like to know who's speaking on
16 behalf of the SRAC estate --

17 THE COURT: Yeah, that's fair.

18 MR. KRELLER: -- when we do that.

19 THE COURT: Who's proffer was you going to be
20 making, Ms. Marcus?

21 MS. MARCUS: Your Honor, it was the proffer of
22 Colin Adams from M-III --

23 THE COURT: Okay.

24 MS. MARCUS: -- which is the company's financial
25 advisor.

1 THE COURT: Okay.

2 MR. KRELLER: And --

3 THE COURT: Very well.

4 MR. KRELLER: Is there any -- Your Honor, I'm --

5 THE COURT: Monday. We'll have the hearing
6 Monday.

7 MR. KRELLER: I'm sorry. Monday, not Wednesday.

8 THE COURT: Monday afternoon.

9 MR. KRELLER: Thank you, Your Honor. And will
10 there be someone -- a representative of the SRAC estate who
11 would actually be taking a position on this?

12 THE COURT: He's the financial advisor for all the
13 Debtors. He's going to talk about SRAC and what's in it.

14 MR. KRELLER: Your Honor, but there's -- the
15 fundamental issue is that these -- different Debtor estates
16 are --

17 THE COURT: He's talking about --

18 MR. KRELLER: -- diametrically opposed to each
19 other.

20 THE COURT: He's talking about -- he's going to
21 have to talk about what's in the SRAC estate. He's going to
22 have to tell me that, what's in the SRAC estate.

23 MR. KRELLER: But --

24 THE COURT: I'm not going to put an examiner for
25 the SRAC estate --

1 MR. KRELLER: I'm -- Your Honor --

2 THE COURT: -- based on what I've heard. And he's
3 the financial advisor for it. He cannot favor --

4 MR. KRELLER: He is, Your Honor.

5 THE COURT: -- one Debtor over another. We spent
6 too much time on this already given the fact that we're
7 going to have a trial on it on Monday. All right?

8 MR. KRELLER: Yes, Your Honor.

9 THE COURT: You do not have to -- you do not have
10 the power to dictate what witness they put forward.

11 MR. KRELLER: I'm not trying to do that, Your
12 Honor. I --

13 THE COURT: Well, you were in fact doing that.

14 MR. KRELLER: I apologize.

15 THE COURT: Yeah, absolutely you were trying to do
16 that. You said, I want another witness. And I'm not going
17 to let -- to require the Debtor to do that. It's their
18 risk.

19 MR. KRELLER: Thank you, Your Honor.

20 THE COURT: All right.

21 MS. MARCUS: Your Honor, if I --

22 THE COURT: Confirm the date with Ms. -- the time
23 with Ms. Lee.

24 MS. MARCUS: If I just may clarify two points for
25 everybody's benefit going forward. The Debtors are not

1 seeking authority to sell 2.3 billion of medium-term notes.

2 The 1.4 billion owned by Sears Re is not part of this.

3 THE COURT: Okay.

4 MS. MARCUS: They haven't been proffered to the --
5 to ISDA for sale, so that's off the table.

6 And the second is the primary owners of the MTNs
7 are Sears Protection Company and Sears Protection Company
8 Florida, and we'll be prepared on Monday to talk about how
9 much each one of those entities owns, but they are both
10 Debtor entities.

11 THE COURT: Okay.

12 MS. MARCUS: Thank you.

13 THE COURT: All right. The indenture trustee also
14 asked me for some sort of ruling on the typo. I don't think
15 -- I don't think it's necessary. And even if it were
16 necessary, I wouldn't do it. I'm just not -- it's too much
17 -- too much involved here to do that.

18 MS. MARCUS: We agree, Your Honor. That's not
19 necessary --

20 THE COURT: Right.

21 MS. MARCUS: -- from our point of view.

22 THE COURT: Okay. All right.

23 So we're dealing with the lease rejection
24 otherwise?

25 MR. SINGH: Yes, Your Honor. We're going to get

1 to the real estate motions, and our colleague Paloma Van
2 Groll is going to present the GOB motion.

3 THE COURT: Okay.

4 MS. VAN GROLL: Good afternoon, your -- good
5 afternoon, Your Honor. Paloma Van Groll, Weil, Gotshal &
6 Manges for the Debtors.

7 THE COURT: Good afternoon.

8 MS. VAN GROLL: The next item on the agenda is the
9 GOB motion. The order of approving the GOB motion on the
10 interim basis was entered on October 26th at ECF number 337.
11 We have a redline of proposed changes from the interim order
12 here if Your Honor would like a copy.

13 THE COURT: Yeah, if you could hand it --

14 MS. VAN GROLL: May I approach?

15 THE COURT: Please. Thank you.

16 MS. VAN GROLL: Since the entry of the interim
17 order, we've received only four objections to the motion,
18 three from certain taxing authorities and one from the
19 landlord, Simon Properties, along with informal comments
20 from the UCC.

21 We believe all the objections are resolved. We
22 cleaned up the master lease language in Paragraph 26 to
23 address Simon's objection, which is not a substantive
24 change. To address the three objections from the taxing
25 authorities, we added a new paragraph, 23, which provides

1 that the Debtors will either pay tax claims directly from
2 the proceeds of store closing sales or fund a segregated
3 account from the proceeds as adequate protection for their
4 liens.

5 THE COURT: Okay. Is --

6 MS. VAN GROLL: The DIP --

7 THE COURT: Mr. Tabachnik, is this -- I mean, this
8 language is okay with you, right?

9 MR. TABACHNIK: Yeah. We actually, you know, the
10 one good thing that came -- should I come to the mic?

11 THE COURT: I think you can be heard. It's fine.

12 MR. TABACHNIK: The one good thing that came from
13 the security delay this morning was that my staff had a
14 chance to look at the list. We actually had language we
15 agreed upon, and then somebody decided that they wanted to
16 list all the taxing entities separately in a lengthy
17 footnote. So that's the thing we've been going over. Some
18 of them are missing, and we'll get them included. And
19 subject to getting all of them properly included and listed
20 in that footnote, I think that the language is going to
21 work.

22 THE COURT: But the language itself -- not the
23 footnote but the text of Paragraph 23 is okay.

24 MR. TABACHNIK: Yes, Your Honor.

25 THE COURT: Okay. All right.

1 MS. VAN GROLL: So subject to adding those other
2 entities in the footnote, we have confirmed signoff from all
3 of the taxing authorities that that language is sufficient,
4 and the DIP ABL and (indiscernible) also signed off on this
5 language.

6 THE COURT: Okay.

7 MS. VAN GROLL: So the only other changes are,
8 one, conforming changes to make the interim order a final
9 order and, two, upon the request of the UCC, we added
10 certain notice and information requirements for, one,
11 information about stores that the Debtors intend to close in
12 the future and, two, if the Debtors ever intend to give a
13 performance-based fee to a liquidation consultant.

14 THE COURT: I'm sorry. Say that again, that last
15 part.

16 MS. VAN GROLL: The last part. So the second --
17 we added in a notice requirement if the Debtors ever intend
18 --

19 THE COURT: Oh, a notice requirement.

20 MS. VAN GROLL: A notice requirement --

21 THE COURT: Yes.

22 MS. VAN GROLL: -- if we ever want to give a
23 performance-based fee to a liquidation consultant.

24 THE COURT: Right, which was implicit anyway.

25 MS. VAN GROLL: Exactly.

1 THE COURT: Okay.

2 MS. VAN GROLL: So subject to any questions that
3 Your Honor may have, the Debtors respectful request entry of
4 the final order.

5 THE COURT: Did you figure out what sundries was?

6 MAN 1: Yes, Mr. (indiscernible).

7 THE COURT: Maybe that was strategic. I don't
8 know.

9 MAN 1: It's basically -- it's basically his way
10 of saying anything else that's appropriately and reasonably
11 --

12 THE COURT: All right. but you have brakes on
13 that.

14 MAN 1: Yes, absolutely.

15 THE COURT: Okay.

16 MAN 1: It has to be --

17 THE COURT: All right.

18 MAN 1: -- reasonable. He has to preapprove them
19 with us.

20 THE COURT: Okay.

21 MAN 1: You know, and, you know, parties which
22 will get notice of it.

23 THE COURT: Okay. All right.

24 MAN 1: Right. Mr. Shock said it cannot be bought
25 at a bodega.

1 THE COURT: Okay.

2 MAN 1: It's appropriate expenses, and we have
3 advanced mechanics to make sure.

4 THE COURT: Okay. All right.

5 Does anyone have anything further to say on this
6 motion? This -- we obviously had an interim hearing on this
7 motion, but now's your chance if you want to say anything
8 further.

9 Okay. I will grant the motion on a final basis as
10 modified as laid out in the proposed order.

11 MS. VAN GROLL: Thank you, Your Honor. I will now
12 cede the podium to my colleague, Candace Arthur.

13 MS. ARTHUR: Good afternoon, Your Honor. For the
14 recode, Candace Arthur of Weil, Gotshal & Manges on behalf
15 of Sears Holdings Corporation and its affiliated Debtors.

16 THE COURT: Good afternoon.

17 MS. ARTHUR: The next item on the agenda is the
18 Debtors' motion seeking approval of lease rejection
19 procedures and abandonment procedures as well. It was filed
20 October 15th and is reflected in the docket as ECF number
21 24.

22 As the Court is aware, the Debtors commenced these
23 cases with approximately 1,800 leases in the real estate
24 portfolio. The Debtors have already sought rejection of 234
25 unexpired leases. And the procedures, which are nearly

1 identical to those approved by this Court in recent retail
2 cases of Tops Market and A&P provide a streamlined approach
3 to efficiently allow the Debtors to shed some burden, some
4 leases, without having to file multiple -- on individual
5 motions.

6 The motion before the Court is uncontested. The
7 two objections filed by landlords have been resolved as
8 reflected in the language included in the revised proposed
9 order.

10 Your Honor, we filed a revised proposed order
11 yesterday evening. And to the extent you'd like a copy of
12 the redline, I'm happy to bring it up.

13 THE COURT: Can you give that to me? Thanks.
14 Thanks.

15 MS. ARTHUR: The revised order is reflected on the
16 docket at ECF number 736. With the Court's indulgence, I
17 can either go through the changes that are substantive or
18 just wait for any questions Your Honor may have in
19 connection with them.

20 THE COURT: Now, these changes are consistent with
21 what I thought should be made, just to make it clear that
22 you were abandoning the property and the claims based on
23 rejection and non-lease-related post-rejection claims were
24 -- survived, which is consistent with the case law in this
25 district, including going back to In Re Ames Department

1 Stores Inc., 306 B.R. 43 Bankruptcy S.D.N.Y 2004. So does
2 anyone have anything further to say on this motion?

3 All right. I will grant the motion given the size
4 of the Debtors' lease portfolio and the protections for both
5 the non-Debtor parties to those leases as well as other
6 constituents in the case. This relief is in the best
7 interests of the Debtors, estates, and creditors.

8 MS. ARTHUR: Thank you, Your Honor.

9 THE COURT: Thanks.

10 MS. ARTHUR: Your Honor, the next item on the
11 agenda is the Debtors' omniums motion to reject certain
12 unexpired leases and related sub-leases and abandoned
13 property in connection therewith.

14 THE COURT: All right.

15 MS. ARTHUR: The motion was filed on the petition
16 date and is reflected not eh docket at ECF number 25. On
17 October 24th, the Debtors did file an amended schedule of
18 rejected leases where they removed five leases and added 22.
19 The amended schedule is on the docket at ECF number 290.

20 I think it's pertinent to provide some relevant
21 background in connection with the 234 stores that the
22 Debtors have designated for rejection. The 234 stores are
23 not necessary for or beneficial to the Debtors' business.
24 As of petition date, nearly all of the stores were dark
25 stores, and others were in the process of being wound down

1 to close.

2 The monthly lease costs, inclusive of rent, CAM,
3 and taxes for the 234 stores is \$12.5 million a month. So
4 it's -- you know, you know, the Debtors determine that there
5 are no current opportunities to assume and assign the
6 leases, and there's no meaningful value that would be
7 realized by any such transactions, so rejecting the leases
8 is a sound exercise of the Debtors' business judgment.

9 The only party that has filed a response in
10 connection with the Debtors' business judgment in rejecting
11 these leases is the recently appointed creditor's committee.
12 The committee's reservation of rights statement is reflected
13 on the docket at ECF number 662.

14 And as an update -- and I'm sure that counsel for
15 the committee can also speak to this as well -- the Debtors
16 have worked with the committee in connection with responding
17 to their information request that they received on Sunday,
18 and we've been informed that they've been satisfied with
19 respect to 227 of the leases, and there's about seven that
20 they're still reviewing and looking into.

21 So to that extent, we would -- we would move to
22 adjourn the motion with respect to the seven leases, and
23 give the committee an additional seven days so that they can
24 also get as comfortable with them as they received -- as
25 they were with the other ones.

1 THE COURT: Okay. Is that --

2 MAN 2: That's fine.

3 THE COURT: Okay. Very well.

4 MAN 2: Thank you.

5 THE COURT: Let me ask you though, the 20 or so
6 that were recently designated, are you looking for approval
7 today on those, or are you going to give the landlords
8 notice but ask for retroactive relief too, the date that you
9 designated them.

10 MS. ARTHUR: We would ask for retroactive relief.
11 We gave -- we provided them notice on October 24th, and we
12 do think that they --

13 THE COURT: Oh, it was -- it was that long ago.

14 MS. ARTHUR: It was, Your Honor.

15 THE COURT: For some reason, I thought you just
16 did it the other day.

17 MS. ARTHUR: No, we didn't.

18 THE COURT: Oh, okay. All right.

19 MS. ARTHUR: So, Your Honor in connection with the
20 motion, there were five objections that were filed by
21 landlords. None of them were with respect to the Debtors'
22 ability to reject the leases. It was only solely as to the
23 rejection date. The Debtors have been able to resolve three
24 of the objections, so we're only going to move forward with
25 two today.

1 As to the resolutions between the Debtors and
2 Maserich Company, Heidenberg Properties, Centennial Real
3 Estate Management LLC, Woodbury Corporation, Rockaway Realty
4 Associates LP, and NW Duluth.

5 The parties have agreed to the rejection date of
6 October 15th. The Debtors will execute a memorandum of
7 lease termination as it relates to the Rockaway Realty
8 lease. The Debtors will turn over any subtenant payments
9 that they may have received and have not yet furnished from
10 November 1st forward to the extent that it's applicable.
11 And the -- also recent agreement with respect to October
12 rent for those parties.

13 The parties intend to enter into a signed letter
14 agreement memorializing the terms. The Debtors have
15 discussed with the creditor's committee as well the terms,
16 and once the -- once the -- once the arrangement has been
17 memorialized, we'll share the letters with the creditors'
18 committee in connection with this as well

19 So, Your Honor, this brings me to the pending
20 objections. The Debtors filed a reply yesterday, and I
21 apologize for its tardiness. It's ECF number 715 on the
22 docket. Each objection, as I noted, contests the proposed
23 the rejection date, and so I'll take the objections in turn.

24 Your Honor, U.S. Realty 86 Associates filed an
25 objection, and their objection is reflected on the docket at

1 ECF number 556. The landlord contends that the rejection
2 date cannot be before the Debtor surrenders possession, and
3 we agree.

4 The Debtors commenced all closing procedures at
5 this location and estimate that the rejection date will be
6 November 30th, as we indicated in the amended schedule.

7 The proposed order -- Your Honor, you will note --
8 provides that rejection is only effective as of the date the
9 Debtors surrendered possession. The landlord also objected
10 to the Debtors' ability to abandon any property, and their
11 position is that the Debtor's rejection cannot be before any
12 personal property is removed. The Debtors have a statutory
13 right of abandonment. This Court and others in this
14 district have granted such relief. And the landlord has not
15 presented any facts as to why the Debtor should be precluded
16 in this instance.

17 So for those reasons, as well as those stated in
18 the reply in the motion, the Debtors believe that the
19 objection should be overruled. I'm not sure if Counsel is
20 present today in the courtroom, but I'm happy to cede the
21 podium to him at this time.

22 THE COURT: Okay. On the first point then, the
23 Debtors -- I'm sorry. Is the -- is the sale still going
24 forth in -- it's ongoing at this property?

25 MS. ARTHUR: Yes, Your Honor.

1 THE COURT: So the award will simply say the date
2 the Debtors deliver possession.

3 MS. ARTHUR: Yes, Your Honor.

4 THE COURT: And at that point, obviously the
5 landlord is free to say, "Well, you didn't really deliver it
6 on that date," and in all likelihood, you'll work out an
7 agreement on the date like you did with the other four. But
8 if not, you'll -- the parties can come in front of me, and
9 I'll decide under the case law that's applicable whether --
10 which party's right on which date.

11 MS. ARTHUR: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. ARTHUR: We've articulated the same to the --
14 to Counsel, and that's exactly how we plan to proceed.

15 THE COURT: Okay. So I have -- I've reviewed U.S.
16 Realty 86 Associates objection, but time happy to hear from
17 its counsel.

18 All right. Well, it seems to me that the first
19 issue raised by U.S. Realty has been clarified on the record
20 as well as in the proposed order.

21 As to the second issue, it really hasn't given any
22 authority for the proposition. The Debtors' right to
23 abandon property is somehow constrained or somehow limits
24 the ability to reject a lease under Section 365 of the
25 Bankruptcy Code, and the case law in this district is to the

1 contrary against the In Re Ames Department Stores Inc. 306
2 BR 43, starting at page 50 and going through page 53,
3 Bankruptcy S.D.N.Y. 2004 in a typically comprehensive
4 opinion by Judge Gerber. He's really covered the issue. I
5 don't think I need to supplement that.

6 As he notes, there is an exception. If the -- if
7 the property is toxic or somehow is, you know, creating a
8 tort or some sort of injury, there may be a limitation on
9 that. But none of that is alleged, and it's hard to believe
10 that this would be the only Sears store in the country that
11 has those -- it has those facts that would pertain to it.
12 So I'm going to overrule the objection.

13 MS. ARTHUR: Thank you, Your Honor.

14 The only remaining objection is that of Wc
15 Independence Center LLC. Their objection is reflected in
16 the docket at ECF number 525. Your Honor, the landlord is
17 seeking to tie the rejection date not to when the Debtors
18 have vacated and surrendered the premises but when a
19 third-party licensee, Spirit Halloween, vacates.

20 So by way of background, Your Honor, with this
21 particular lease and the situation before the Court, the
22 Debtors publicly announced it was ceasing operations and
23 shuttering this location on May 14th, 2017. The Debtors
24 commenced a three-month door-closing process and the store
25 went dark on July 30th, 2017. So for about a year and a

1 half, the Debtors had been paying their rent and performing
2 under the lease as they're required to.

3 So on the petition date, the Debtor served the
4 landlord a surrender letter, which included key access codes
5 and noted for the landlord that they may enter and re-let
6 the premises. The landlord was also served notice of the
7 motion on the 15th. The Debtors timely paid October rent
8 for the full month, even though they are seeking to reject
9 as of October 15th, and the landlord received such amounts.

10 The landlord is now asking for an additional nine
11 days of November on account of the sub-tenant remaining in
12 the premises for an -- for those -- for that additional
13 period. The Debtors don't believe that Section 365 nor
14 Section 503 supports the landlord's position. Your Honor,
15 the landlord made no attempts to remove the tenant between
16 the 15th and the 9th. And the Debtors believe that the
17 objection is an attempt to extract post-potion,
18 post-rejection amounts that should not be permitted.

19 This Court has held numerous times that the
20 appropriate rejection date is a date in which the Debtors
21 surrender possession and tell the landlord it can come in and
22 re-let the premises, and that's what happened here in this
23 instance.

24 The Court has also noted that post -- that
25 post-rejection it is the landlord's burden to evict a

1 sub-tenant that may be remaining on the premises. The
2 Debtors believe that that Court should hold, as it has
3 previously, that the rejection date should be the date of
4 surrender, which is October 15th.

5 THE COURT: Okay. Is anyone here on behalf of Wc
6 Independence?

7 MR. BUTLER: Your Honor, this is Lynn Butler. I'm
8 not the line. I apologize. Travel difficulties have
9 prevented me from being there live.

10 THE COURT: No problem. That's fine.

11 MR. BUTLER: I represent -- I'm sorry?

12 THE COURT: I said no problem. That's fine.
13 You're -- I hear you loud and clear.

14 MR. BUTLER: Thank you, Your Honor. I represent
15 Wc Independence Center. Again, Lynn Butler with Husch
16 Blackwell in Austin, Texas.

17 Our position -- actually, the resolution that was
18 put on the record with the prior objection, the way I see
19 this is we have a dispute as to when the premises were
20 surrendered, which with the new -- the new version of the
21 order in which the administrative claim restriction has been
22 stricken from the order -- my suggestion would be we will at
23 the appropriate time file a request for administrative
24 expense in which we may choose to add that nine days of
25 November in which the premises were not available to us. And

1 at that point in time, if the landlord and the Debtors can't
2 reach a resolution, we can have an evidentiary hearing on
3 it.

4 Our position is the Halloween store that existed
5 in the location was there through an agreement with the
6 Debtors, an agreement that was permitted under the lease.
7 And I have a funny feeling if we evicted the Halloween store
8 on October 16th, the Debtors may have had us in front of you
9 for stay violations at that point.

10 But I think the procedure that I'm recommending is
11 probably the most efficient way to get this resolved.

12 THE COURT: Okay. I think that's right. I don't
13 -- I'm certainly not able to resolve it all -- I don't know
14 all the facts. I mean, it's odd to be asking for rent from
15 a Halloween store for November, but -- it -- you're -- are
16 you turning over the sub-tenant's rent from the 15th?

17 MS. ARTHUR: We were only paid rent as of October
18 1st, to the extent that anything came in subsequently, we
19 would be happy to do so.

20 THE COURT: Okay.

21 MS. ARTHUR: We're not -- obviously not intending
22 to keep it.

23 THE COURT: All right. So I'll grant the motion
24 insofar as it seeks rejection and under the current
25 language, the landlord's free to dispute the date and the --

1 and is also free to assert a claim, you know, administrative
2 claim.

3 MS. ARTHUR: Okay.

4 MR. BUTLER: I appreciate it, Your Honor.

5 THE COURT: Of course, the Debtors are free to
6 object to that, and I expect it'll probably be worked out.

7 MS. ARTHUR: All right. Thank you.

8 MR. BUTLER: Yes, sir.

9 THE COURT: Okay. Thank you.

10 MS. ARTHUR: I think the next item on the agenda
11 is the de minimums asset sale procedures motion.

12 Your Honor, a revised form of order was also filed
13 in connection with this motion. The revised order is on the
14 docket at 739. I'd be happy to provide Your Honor with a
15 redline.

16 THE COURT: Is that different than the one that's
17 in the binder?

18 MS. ARTHUR: I believe so, only because it was
19 filed late last night, so --

20 THE COURT: Okay. Why don't you -- why don't you
21 hand that up then? Thanks.

22 MS. ARTHUR: Your Honor, this motion is also
23 moving forward on an uncontested basis. The language as
24 reflected in the order has been heavily negotiated with
25 various parties. We believe it addresses all concerns,

1 whether formally made or informally made. I'm happy to walk
2 Your Honor through the changes and -- or, if you prefer, to
3 the extent you have any questions, I can await those
4 questions and answer them in turn.

5 THE COURT: Let me just take a quick look at it.

6 Okay. So you've gotten rid of the no-look number.

7 MS. ARTHUR: Yes.

8 THE COURT: So there will -- there are a group of
9 parties that will get notice of any of these.

10 MS. ARTHUR: Of any. Yes, Your Honor. Any sale
11 that's below --

12 THE COURT: All right.

13 MS. ARTHUR: -- \$15 million.

14 THE COURT: And I guess the question I had on this
15 -- and I'm not sure this answer it, this blackline answers
16 it. A couple of parties had said, well, does this include
17 sale of our lease or sale of our contract? And there's
18 language in here that says that it doesn't include sale of
19 restricted covenants and -- I mean, you know, easements
20 running with the land and such, or master leases. So there
21 could be an implication that does include sale of leases.

22 MS. ARTHUR: So, Your Honor, we did end up
23 addressing that issue. It's Paragraph 10 on page 9.

24 THE COURT: Oh, okay.

25 MS. ARTHUR: And we specifically noted that the

1 procedures will not be used in connection with the
2 assumption or the assumption assignment of executory --

3 THE COURT: Okay.

4 MS. ARTHUR: -- contracts, unexpired leases of
5 personal property, and unexpired leases of non-residential
6 real property for which the Debtor is not a landlord.

7 THE COURT: All right. So the other language
8 about restrictive covenants is --

9 MS. ARTHUR: That's still there as well, Your
10 Honor.

11 THE COURT: Is that -- that's just -- okay. So
12 people were concerned that you were going to sneak that
13 through this one instead of the lease motion, and they
14 wanted out of here.

15 MS. ARTHUR: They were concerned on every single
16 motion we were going to sneak it.

17 THE COURT: All right.

18 MS. ARTHUR: So that language is in a lot of
19 places.

20 THE COURT: Okay. Well, I overlooked that
21 paragraph. Let me just make sure -- and you're still
22 noticing anyone that has an interest?

23 MS. ARTHUR: Yes, Your Honor.

24 THE COURT: I had one at -- this -- these
25 procedures do not apply to insiders, to sales, to insiders?

1 MS. ARTHUR: You're correct, Your Honor.

2 THE COURT: Okay. All right. all right. does
3 anyone have anything further to say on this motion?

4 MR. FROELICH: Your Honor, could I just be heard
5 quickly?

6 THE COURT: Yes.

7 MR. FROELICH: Good afternoon, Your Honor. Joseph
8 Froelich from Locke Lord on behalf of Cardtronics.
9 Cardtronics is an entity that provides the ATMs --

10 THE COURT: Oh, right.

11 MR. FROELICH: -- and, more importantly, the cash
12 inside the ATMs.

13 THE COURT: Right.

14 MR. FROELICH: As I've learned, the cash inside
15 the ATMs I think is actually more valuable than the ATMs
16 themselves, if you can believe. But the issue we had raised
17 was the 2.5 million, and that got taken out, and we're very
18 fine with that.

19 The one question we had raised informally was it's
20 unclear whether we are a noticed party, but they did put in
21 a line that said they were going to file it. I assume that
22 means file it on the docket in this case. And if that's the
23 case, then we are fine, and we're good to go.

24 THE COURT: Okay.

25 MR. FROELICH: All right.

1 THE COURT: And you will be filing the notice?

2 MS. ARTHUR: Yes, Your Honor, we're going to file
3 it on the docket.

4 THE COURT: Okay. All right.

5 MR. FROELICH: Thank you, Your Honor.

6 THE COURT: Okay. I'm assuming you're not selling
7 their cash.

8 MS. ARTHUR: No, we're not.

9 MR. FROELICH: We hope not, Your Honor.

10 THE COURT: Okay. All right. All right. I will
11 grant this motion. I think the revised order properly sets
12 the threshold for these procedures and gives appropriate
13 review rights to parties as well as deals with certain types
14 of assets that are more sensitive than others in a way that
15 is fair and reasonable. So I'll grant this relief.

16 MS. ARTHUR: Thank you, Your Honor.

17 At this time, I'll cede the podium to my college,
18 Garrett Fail.

19 THE COURT: Okay. We skipped over the time to --
20 the motion for an extension of time to assume or reject
21 leases.

22 MS. ARTHUR: Oh, yes, Your Honor. So we had one
23 objection to that motion. It was later withdrawn.

24 THE COURT: Oh, okay.

25 MS. ARTHUR: And the language that we provided in

1 the revised order addressed their concern, which was really
2 just clarifying that to the extent that the landlord took a
3 position that the lease was not unexpired, or was
4 terminated, that it was not going to be affected by the
5 relief requested.

6 THE COURT: Okay.

7 MS. ARTHUR: A CNO was submitted as well yesterday
8 for it.

9 THE COURT: Okay. Very well.

10 MR. FAIL: Good afternoon, Your Honor. Garrett
11 Fail, Weil, Gotschal & Manges, for the Debtors.

12 THE COURT: Yes.

13 MR. FAIL: The next item on the agenda is final
14 hearing on one of the Debtors' first day motions for
15 shippers, warehousemen, other non-merchant lien claimants,
16 PACA/PASA claims, and related relief.

17 Your Honor, no one has objected to the payments or
18 the authority to pay shippers, warehousemen, or other liens,
19 or PACA/PASA. There were two statements that were filed.
20 One was from a warehousemen shipper who had questions about
21 -- which had questions about its own situation. The Debtors
22 are in discussions, and from the Debtors' perspective,
23 nothing in that filing precludes entry of a final order
24 today.

25 THE COURT: All right, that's --

1 MR. FAIL: That's the objection by Dart --

2 THE COURT: That's the Dart one?

3 MR. FAIL: -- or the statement and position that
4 was filed.

5 THE COURT: That was my view in looking at that.
6 But I'm happy to hear from them if they have any --

7 MR. FAIL: Counsel for Dart is here. I'll give
8 them an opportunity, if there's anything that we're missing.

9 THE COURT: Okay.

10 MR. FAIL: Or was here.

11 MR. FENNEL: I am here.

12 MR. FAIL: Okay.

13 THE COURT: So, anything to add to that?

14 MR. FENNEL: No, Your Honor.

15 THE COURT: Okay.

16 WILLIAM FENNEL: Just for the record, William
17 Fennell, on behalf of Dart Warehouse. At this point, Mr.
18 Fail's comment that we're in discussions is appropriate and
19 accurate.

20 THE COURT: Okay. Thank you.

21 MR. FAIL: The other response and limited
22 objection that was filed was by Apex Tool Group. Your
23 Honor, the Debtors' position is that there is also nothing
24 here that would preclude entry of a final order. The
25 interim order contains standard comfort order language to

1 provide for those parties that would -- may be entitled to
2 501(b) -- 503(b)(1) priority.

3 THE COURT: (b)(9).

4 MR. FAIL: No. Post-petition.

5 THE COURT: Oh.

6 MR. FAIL: Parties that -- there were parties that
7 held doing anything, providing goods or services, until
8 after the bankruptcy. Once the bankruptcy came, parties
9 were prepared to deliver, ship and pick up.

10 Also, we had orders that were in place that were
11 not paid for and weren't due to be paid, and weren't
12 provided, delivered, received in any respect. And for those
13 parties, rather than ripping up old POs or requiring new POs
14 or requiring purchase orders with new tax identification
15 numbers which don't exist, or a new purchase order with the
16 word "Debtor in possession", this provided comfort to
17 parties that they would be entitled to administrative
18 priority, as they normally would be.

19 THE COURT: Okay. But I thought the issue was --
20 they just wanted to make sure that nothing in this order
21 restricted their rights under (b)(9)?

22 MR. FAIL: Your Honor, if that's the case, there
23 was language in the order that said nothing enhanced or
24 inhibited or hurt parties' priority. What we read this
25 language to be was a determination as to what would be

1 503(b)(9). Your Honor is aware, and they cited in their
2 brief the case law on what "delivered" means. We --

3 THE COURT: Right. I'm not going to decide that
4 today.

5 MR. FAIL: We're not asking you to, Your Honor.

6 THE COURT: Okay. All right.

7 MR. GALARDI: Your Honor, very briefly, Gregg
8 Galardi, of Ropes & Gray, on behalf of Apex.

9 THE COURT: Okay.

10 MR. GALARDI: We filed the objection.

11 THE COURT: Right.

12 MR. GALARDI: We also are a member of the
13 Creditors' Committee. Your Honor, just -- all we really
14 asked for was a clarification of the word "delivered",
15 because as we put forth in our paper --

16 THE COURT: That would take me about two months.

17 MR. GALARDI: I understand that, Your Honor. And
18 we're not saying you have to do that.

19 THE COURT: Okay. Good.

20 MR. FAIL: We're letting you know, though, the
21 word 503(b)(9), which they did rely on for the relief, uses
22 the word "received", which is different.

23 THE COURT: But as long as it's clear that anyone
24 who believes they have a 503(b)(9) claim is not affected
25 adversely by this order, then it should matter, right?

1 MR. GALARDI: No, but it does matter on 503(b)(1),
2 Your Honor, for the following reason. Your Honor, they
3 asked for 160 -- they say they have \$162 million of
4 prepetition orders. Those orders were going to be delivered
5 post-petition, without clarity on what the word "delivered"
6 means. And Your Honor, I understand if you want to defer
7 that to a future date, then we'll have a 503(b)(1) fight
8 about what's payment in the ordinary course. That was the
9 point, because the word 503(b)(9) is received, (b)(1) says
10 actual and necessary, and what constitutes a delivery, we're
11 concerned that vendors such as ourselves and others were
12 being given "a comfort order" saying it's an administrative
13 expense, when purchase orders could change title, FOB, and
14 that doesn't give anybody any sort of administrative
15 expense.

16 THE COURT: Well, but, I mean, you're asking me
17 for an advisory opinion. I mean, I just don't see a reason
18 to, certainly not on today's record to have a declaratory
19 judgment on that issue.

20 MR. GALARDI: Again, Your Honor, it's your order
21 with your word "delivered". If the order is ambiguous, we
22 wanted to have the opportunity to clarify it. If you're
23 comfortable with that word and how it's been used in the
24 orders, we'll have a litigation, if we have to, about the
25 administrative expense claim.

1 THE COURT: Well, I mean, I think there's two
2 levels to it, right? There's the colloquial word "deliver",
3 and it's just an order. And then there's the statute. As I
4 read it, this order doesn't change anyone's rights under the
5 statute.

6 MR. GALARDI: Under 503(b)(9), correct.

7 THE COURT: But I think just in terms of the
8 colloquial meaning of the word "deliver", anyone who
9 actually did deliver should be pretty comfortable. And the
10 people who transferred title but kept it in their warehouse,
11 they're going to have to talk to their lawyer. But they
12 also have their rights under 503 preserved.

13 MR. GALARDI: That's fine, Your Honor.

14 THE COURT: Okay.

15 MR. GALARDI: Thank you.

16 MR. FAIL: Thank you, Your Honor. Just to note,
17 we would dispute any assertions that folks were misled.
18 We'll leave that for another day. And it sounds like there
19 might be a -- might've been a question about who's being
20 paid and the concern that we were paying people. I would
21 suggest that parties -- the party that hasn't been paid
22 would say that we aren't paying. So, the money isn't just
23 going out the door --

24 THE COURT: Okay.

25 MR. FAIL: -- without careful consideration as to

1 who's entitled to be paid.

2 THE COURT: Okay.

3 MR. FAIL: Unless Your Honor has any questions...?

4 THE COURT: No, I mean, I think that was pretty
5 clear. I mean, frankly, to me, the word "delivered", as
6 used in this order, is not tied to any particular statutes.
7 It's the word in the order. But --

8 MR. FAIL: We agree, Your Honor.

9 THE COURT: -- again, the order doesn't change
10 anyone's rights under the statute. So, I'll grant the
11 motion. I think both objections have been resolved. And
12 the record set at the interim hearing justifies the motion,
13 which is now unopposed, except to the limited extent that
14 the objections still survive, which is minimal.

15 MR. FAIL: Thank you, Your Honor. I'll turn the
16 podium over to Mr. Basta, counsel -- or proposed counsel, or
17 counsel for the Special Committee, the Restructuring
18 Committee of the Board.

19 THE COURT: Okay.

20 MR. BASTA: Good afternoon, Your Honor. Paul
21 Basta from Paul, Weiss. We represent the Restructuring
22 Subcommittee of the Board. The Restructuring Subcommittee
23 has two members on it, Mr. Bill Transier, who is here in the
24 courtroom, as well as Mr. Alan Carr.

25 THE COURT: Okay.

1 MR. BASTA: And they're both independent
2 directors. The Subcommittee sought to retain Evercore, and
3 the Committee has objected. The retention is supported by
4 two declarations, one from Mr. Dan Aronson, who is in the
5 court, who would be leading the engagement, as well as Mr.
6 Transier. We'd like to move those declarations into
7 evidence.

8 THE COURT: Okay. Does anyone want to cross-
9 examine them on their declarations? Okay. I've reviewed
10 both of them and at least as of now, I don't have any
11 questions. But I'll admit them into the evidentiary record.

12 (Declarations of William Transier and Daniel
13 Aronson Entered into Evidence)

14 MR. BASTA: Thank you, Your Honor. The mandate of
15 the restructuring committee is attached as an annex to Mr.
16 Transier's declaration. And if Your Honor looks at that
17 mandate, that mandate looks backwards, and it looks
18 forwards. It looks backwards because our job is to
19 investigate the 19 affiliate transactions. There may be
20 more that occurred here that involve billions of dollars of
21 value.

22 It looks forward because to the extent there needs
23 to be a disposition of those litigation assets, whether it
24 be commencing litigation, or settling litigation, or looking
25 at a contribution from and defendants as part of any

1 settlement or transaction involving potential defendants,
2 the approval of those transactions requires the approval of
3 our subcommittee, and therefore, the amount of contribution
4 that may be involved in any of those transactions also
5 requires analysis as we go forward.

6 This function of the restructuring committee, we
7 believe, is extremely important in this case. And your
8 honor has already seen the positions of the parties start to
9 develop. ESL has filed a number of pleadings, making it
10 clear that they think all the affiliate transactions were
11 proper. And the Creditors' Committee has expressed very
12 significant concern regarding these transactions.

13 And ESL, who is a target of the investigation, is
14 the largest secured creditor, with \$2.6 billion of secured
15 claims. And so, to the extent those secured claims could be
16 the subject of avoidance or subordination, there would
17 obviously be an enormous transfer value from one
18 constituency to another.

19 And so, we're taking our job very, very seriously,
20 and we're going to get to the bottom of what happened here,
21 but we need Evercore to do it. Evercore has significant
22 expertise in the areas in which we need help. Valuation
23 including DCF comparable company transaction values,
24 evaluating the terms of the debt and any marketing process
25 that went to third parties to determine if they got the best

1 terms on the debt that was provided, critique of sale or
2 marketing processes. And as I mentioned, perhaps most
3 importantly, they will provide -- help us evaluate value
4 coming into the estate in various contexts that go forward.

5 There are three main objections. The first
6 objection is duplication with A&M, who is also helping the
7 Restructuring Committee. Our pleadings highlight the
8 different roles that Evercore will play and that A&M will
9 play.

10 And I'm not going to repeat how we divide up the
11 responsibilities, but I think that from my very simple
12 perspective, Your Honor -- and Your Honor knows this from
13 every case we ever have -- if you're going to do solvency
14 work, you've got to get into the projections, and you've got
15 to determine whether the projections were reasonable and
16 whether the process that led to the projections are
17 reasonable.

18 And A&M is going to be taking the lead on looking
19 at the projection elements. They're also helping with the
20 solvency. But Evercore has a particular expertise as an
21 investment banker to help evaluate the value of the
22 transactions and the fairness of the transactions.

23 On duplication, Your Honor, this subcommittee is
24 extremely active. We have calls twice a week formally, and
25 we speak to the Restructuring Committee every day. And

1 they're in our offices often and they require updates from
2 each professional as to what they're doing. And they're
3 going to make significant effort to make sure there's not
4 duplication.

5 The second objection is that this work could be
6 performed by Lazard. Lazard has a different client. Lazard
7 reports to the full Board, and last I could tell, they had
8 their hands full on other subjects.

9 Finally, they requested that we put evidence to
10 support the reasonableness of the fee. There's two
11 components, I think, to the fee here. We did not want the
12 fee to be a transaction fee. We do not want to create any
13 incentive from Evercore to feel that there has to be a
14 transaction or no transaction.

15 So, the way the fee is structured is with a
16 \$200,000 monthly, with a minimum of \$3 million. We think
17 that's an appropriate structure as to the quantum of the
18 fee. Attached to Mr. Transier's declaration is support from
19 other independent committees. I would note that in those
20 other independent committees, there wasn't nearly as
21 extensive an investigation as there's going to be here.

22 THE COURT: Okay. On the overlapping issue, the
23 description in the declaration says that one of the things
24 A&M will be doing is "contemporaneous solvency analysis",
25 and just wasn't clear to me what that -- does that mean,

1 basically -- well, I don't know what that means. I mean, is
2 it -- how does that not overlap with valuation analysis of
3 the transferred businesses, which is what Evercore is doing?
4 Are they --

5 MR. BASTA: I think --

6 THE COURT: I think, what I was about to say, but
7 then I wasn't sure what it meant, is are they looking at
8 what other people did at the time, like if there was a
9 solvency opinion that --

10 MR. BASTA: Well, the --

11 THE COURT: -- I don't know, Houlihan Lokey gave,
12 or someone like that?

13 MR. FAIL: Your Honor, there's a Duff & Phelps
14 solvency opinions that support two of the transactions that
15 we're looking at. Those solvency opinions have DCS net
16 asset value components to them. A&M is really looking at
17 those opinions and helping us critique those opinions.
18 Evercore is looking more at like the transaction multiples
19 upon which those transactions were based.

20 THE COURT: So, in doing contemporary solvency
21 analysis, they're not doing the same valuation work?

22 MR. FAIL: Well --

23 THE COURT: They're basically looking at the bona
24 fides of those types of opinions that were given to people
25 at the time of the transaction?

1 MR. BASTA: Yes, Your Honor. And if there's a
2 matter that's being handled by A&M, there's a work plan in
3 place that's being directed by the committee to make sure
4 that that's not being duplicated by Evercore.

5 THE COURT: Okay. Well -- and that's my next
6 question. Obviously, the committee is looking at these
7 types of issues too, and they have their financial advisor,
8 who also has their hands full, but they're also doing this
9 type of work. And neither the company nor the committee
10 have objected to your process or their process going on,
11 except with regard to Evercore.

12 And I guess the question I have on Evercore is do
13 you each need of financial advisor on this --

14 MR. BASTA: Well, Your Honor --

15 THE COURT: -- on these sets of issues? Can't you
16 share Evercore or share the other one? I mean, they're both
17 great. I mean, I don't understand --

18 MR. BASTA: Your Honor, I don't really believe
19 that works --

20 THE COURT: No?

21 MR. BASTA: -- in this context for the following
22 reason. You know, what's unique about this case is that the
23 target of the investigation, one of the targets of the
24 investigation, is a secured creditor, which is -- so the
25 interests of the Restructuring Committee are different than

1 the interests of the unsecureds. Obviously, the unsecureds,
2 to the extent that that debt is subordinated or avoided,
3 gets a transfer of value.

4 So, the way we view it is we're independent and
5 we're looking at it neutrally. We understand that the
6 Creditor's Committee -- and we've been facilitating their
7 investigation -- they need to see what we're looking at,
8 where the financial advisors are coordinated, so that the
9 information is being shared. But I think the purposes of
10 the investigation are really different.

11 THE COURT: Well, I guess I understand that with
12 the lawyers, and I think also probably with A&M. I just --
13 you know, Evercore, if they testify, are going to be an
14 expert. I appreciate experts, generally speaking, somehow
15 find a way to take a position that's consistent with their
16 client's position.

17 MR. BASTA: Well, Your Honor, let's take this --

18 THE COURT: Have there been any discussions about
19 splitting up the work, maybe for less -- I don't know.

20 MR. BASTA: Your Honor --

21 THE COURT: I'm just curious.

22 MR. BASTA: Let's pose the following context.

23 Let's say that there is a transaction that's going forward -
24 -

25 THE COURT: No, you have to know the past to

1 value the future. I get that.

2 MR. BASTA: Well, let's just there's a -- let's
3 say we are faced in a month with a transaction that's going
4 forward --

5 THE COURT: Right.

6 MR. BASTA: -- that the Creditors' Committee says,
7 you know, we don't like that deal.

8 THE COURT: Right.

9 MR. BASTA: And let's say that deal asks for a
10 release. And there needs to be testimony that says, well,
11 what's the contribution being given for the release, what's
12 the value for the release, and we need to present that to
13 the Court? Our job is to give the Court what our view is as
14 independent. The Creditors' Committee has other factors
15 that they're considering. So, I just don't think the two
16 sit in the same position.

17 Evercore might look at the transaction and say
18 that the contribution is X dollars, and Houlihan might look
19 at it and say that the difference between this transaction
20 and another liquidation bid, or another going concern bid is
21 different. I think that has to come out in the adversary
22 process.

23 THE COURT: Okay. Do you have the same view? I'm
24 not sure which one of you guys is speaking on this one.

25 MR. DIZENGOFF: I'll take it.

1 THE COURT: Okay.

2 MR. DIZENGOFF: Do you want me to address the
3 Evercore issues first, or your latter points?

4 THE COURT: The latter ones.

5 MR. DIZENGOFF: Yeah, I largely share that view.
6 I think Evercore will do whatever Evercore does. But the
7 role of the Creditors' Committee is, as the fiduciary for
8 unsecured creditors, to maximize the value.

9 And if it turns out that the only bid that
10 actually does materialize is the ESL bid, and it's
11 functioned with a release, which is what we've been told by
12 their counsel, that's going to be a problem for us if we
13 actually think that there are viable causes of action.

14 THE COURT: Right.

15 MR. DIZENGOFF: So, I don't think we could rely on
16 what the Restructuring Committee advisors say in that
17 regard. We have to do our homework on our own and draw our
18 own conclusions.

19 THE COURT: Okay.

20 MR. DIZENGOFF: And for that, we need our own
21 advisers to do so.

22 THE COURT: Okay.

23 MR. DIZENGOFF: And I'll get -- do you want me to
24 address the Evercore issues?

25 THE COURT: Well, I think -- yeah, that was my

1 only question --

2 MR. DIZENGOFF: Okay.

3 THE COURT: -- for both. So, why don't I hear
4 from you on the other points?

5 MR. DIZENGOFF: Okay, so four quick points, all of
6 which Mr. Basta has touched on.

7 First is the need for actually two financial
8 types. So, this is a subcommittee of a restructuring
9 committee of the Board of Directors. We asked for a
10 precedent for these kinds of engagements, and we've never
11 seen anything. And we were not supplied with --and maybe it
12 exists, but I just haven't -- we haven't been able to find
13 it -- where multiple financial types were retained by a
14 subcommittee of a restructuring committee.

15 I understand the case is large and complex and
16 unusual, but this is an unprecedented transaction. That's
17 issue one. Issue two --

18 THE COURT: But isn't it ultimately the
19 Restructuring Committee? I mean, there's a smaller group
20 working on this, but that's because --

21 MR. DIZENGOFF: And that's fine. I still haven't
22 found a circumstance in which a restructuring committee
23 hired two financial advisors.

24 THE COURT: Okay.

25 MR. DIZENGOFF: I would say financial types.

1 THE COURT: All right. All right.

2 MR. DIZENGOFF: So, I understand they have two
3 firms that they think are both qualified. Just a quick
4 review of the A&M website, the Alvarez website, says that
5 they can do all the suite of services that Mr. Basta
6 articulates that Evercore would do. You look at it, it says
7 they can value businesses, they do solvency, they do
8 fairness opinions, all those things.

9 So, I don't understand what it is that the estate
10 is being burdened by. The cost of this is \$3 million.

11 THE COURT: They would --

12 MR. DIZENGOFF: Because it's a guaranteed minimum.

13 THE COURT: They would probably charge more than
14 they're charging now, though, for that.

15 MR. DIZENGOFF: Yeah, I understand that, but it's
16 hourly. So, at least I know exactly what they're doing,
17 what A&M is doing. I know exactly what they're doing, and I
18 know what the work product is.

19 Here, it's largely like a check on A&M is doing
20 and saying, hey, it's \$3 million, no matter what. Why don't
21 you just do a whole bunch of things and we'll get two
22 opinions and see if they actually line up? But I think
23 that's just redundant, Judge.

24 THE COURT: But it -- well, I understand your
25 concern about duplication, but it appears, at least from the

1 declarations, that the opinions are really quite different.

2 MR. DIZENGOFF: Yeah, I understand that that's
3 what they articulated, that they're going to say there's two
4 different roles. But I have an advisor in A&M that can do
5 everything, or I have an advisor in Evercore that can do
6 only one subset.

7 So, why shouldn't I take the advisor that can do
8 everything? Whatever the cost is of that, it is. I don't
9 need Evercore to be redundant of what A&M is fully capable
10 of doing and can do. And that suite of services is readily
11 available to them.

12 THE COURT: Well, if it's essentially -- I don't
13 know the answer to this, but if it's essentially the same,
14 why not let the Debtors' committee have its choice?

15 MR. DIZENGOFF: Yeah.

16 THE COURT: I mean, you're positing that it --

17 MR. DIZENGOFF: That would be okay with me.

18 THE COURT: You're positing that it would be
19 different.

20 MR. DIZENGOFF: Yeah.

21 THE COURT: But I don't know whether it would be
22 different, if just A&M did it.

23 MR. DIZENGOFF: From our perspective, if just A&M
24 was their advisor, I don't think we actually have an issue.

25 THE COURT: it might end up costing more, though.

1 MR. DIZENGOFF: And it might, actually. I don't
2 know the answer to that. You know what? You're right. In
3 fairness, it might. If Evercore could do the entire suite
4 of services that was required -- we're not quibbling with
5 their retention of an advisor, or quibbling with their
6 retention of two advisors that are both financial types,
7 where one we know can do the entire universe of what's
8 required, as Mr. Basta articulates and as their declaration
9 sets forth, and then one that is just a subset of it that
10 has a fixed fee for \$3 million that I can't revisit under
11 328, which is how the retention is proposed.

12 So, I'm troubled by that. Your Honor, I don't
13 think they need that. Or we should have the ability to
14 review that down the road to see if there was duplication
15 and unnecessary costs.

16 MR. BASTA: Your Honor, I reviewed the FTI website
17 and FTI actually can provide the same services as Houlihan.
18 Just because someone has on their website the expertise,
19 that would mean that the client doesn't have the business
20 judgment range to be able to decide who they want to do
21 what.

22 THE COURT: Okay. You do have two.

23 (Laughter)

24 MR. DIZENGOFF: I do have two, except our tasks,
25 Your Honor, our tasks are dramatically more, dramatically

1 more, sir. He has one microcosm as a subset.

2 THE COURT: He actually has three.

3 MR. DIZENGOFF: Yeah, but he has --

4 THE COURT: Actually, four. Okay, I got it. But
5 still --

6 MR. BASTA: And Your Honor, I did want to make
7 point, Your Honor -- sorry to interrupt -- about the broader
8 four of the restructuring --

9 THE COURT: No, can I -- I'm going to interrupt
10 you. I mean, when I have had valuation testimony, the
11 investment bankers almost uniformly do not get into the
12 projections. I mean, they rely on the company or they rely
13 on the equivalent of FTI that, you know, or A&M to vet the
14 projections.

15 So, I really don't think that it's necessarily odd
16 to have it structured this way. But anyway, I interrupted
17 you, because you were will still -- you were --

18 MR. DIZENGOFF: No, no --

19 THE COURT: There's more aspects to your objection
20 than that.

21 MR. DIZENGOFF: Those are the four points of our
22 objection, which is two financial advisors. One is -- can
23 provide this whole suite of services, so why do you actually
24 need two?

25 THE COURT: Right.

1 MR. DIZENGOFF: The cost, which is guaranteed, for
2 \$3 million and unprotected under 328.

3 THE COURT: Well, I guess that's -- this case may
4 be a lot shorter than \$200,000 per month, adding up to \$3
5 million. So, the guarantee bothered me, and my thought was
6 that we should either do Section 330 on this or take out the
7 guarantee. I just -- you know, \$200,000 is a lot for this
8 limited -- it's a lot of work, but it's not totally open-
9 ended, except for the future valuation of a release.

10 But to guarantee the \$3 million, I just -- I was
11 troubled by that.

12 MR. BASTA: Well, let me address that, and I did
13 want to come back to one other point, Your Honor.

14 THE COURT: Okay.

15 MR. BASTA: Which is, we don't know how long this
16 project is going to last --

17 THE COURT: I know, but it's --

18 MR. BASTA: We don't know if it's going to --

19 THE COURT: -- \$200,000 until it -- forever, until
20 it's over.

21 MR. BASTA: It does. And the \$3 million is the
22 minimum. I believe that was the opportunity cost of
23 securing, you know, Evercore for this --

24 THE COURT: Well --

25 MR. BASTA: -- for this engagement. I can ask

1 them about --

2 THE COURT: I mean, I --

3 MR. BASTA: -- the 330 versus the guarantee, but
4 it was a material part of the negotiation of this fee.

5 THE COURT: All right. I mean, to me --

6 MR. BASTA: Your Honor, if you look --

7 THE COURT: I can -- put it this way. I can
8 imagine scenarios where this all gets resolved in January.
9 You know, it's conceivable that you and Mr. Dizengoff and
10 your friends at Weil Gotschal will actually have a meeting
11 of the minds and figure out how to get out of the case and
12 the burn. And then to pay another, you know, \$2.4 million
13 is -- it's asking a lot, I think.

14 So, to me, the guarantee should be subject to 330
15 review, is what I'm saying.

16 MR. BASTA: I will raise that with Evercore, Your
17 Honor.

18 THE COURT: Okay. All right.

19 MR. BASTA: The other point I wanted to make is
20 Your Honor made the point that there is a Restructuring
21 Committee of four, but it was delegated to the two.

22 THE COURT: Right.

23 MR. BASTA: The reason why it was --

24 THE COURT: The other guys are doing some things
25 too, I'm assuming?

1 MR. BASTA: Well, no, it's -- Your Honor, what it
2 is is that the other two were part of the independent
3 committee that approved all of the transactions --

4 THE COURT: Okay. All right.

5 MR. BASTA: -- that are being questioned. So,
6 it's being --

7 THE COURT: But they're working on other aspects
8 of the case.

9 MR. BASTA: And they're working very hard on other
10 aspects of the case.

11 THE COURT: Right.

12 MR. BASTA: But I believe the purpose of the
13 subcommittee is to have a conflict-free party during the
14 investigation.

15 THE COURT: Okay. All right. So, I'm prepared to
16 grant this motion, on the condition that the guarantee
17 aspect of it be subject to 330 review, beyond the normal
18 U.S. Trustee right to do a 330 review -- by everybody.

19 MR. BASTA: Your Honor, let me --

20 THE COURT: I mean, I just -- I would be very
21 reluctant to have an imputed hourly rate that just -- that
22 could just skyrocket. I mean, it just in these facts --

23 MR. BASTA: Your Honor, Evercore doesn't go by an
24 hourly rate, so we were --

25 THE COURT: I know, but I --

1 MR. BASTA: -- so we were struggling to try to
2 find --

3 THE COURT: Yeah.

4 MR. BASTA: -- a way to get them to provide the
5 value here.

6 THE COURT: Right. Okay.

7 MR. BASTA: But I will consult with them and come
8 back to the Court.

9 THE COURT: Okay.

10 MR. BASTA: The next item on the agenda, Your
11 Honor, was our 2004 motion, but that has not been objected
12 to.

13 THE COURT: Right. And the Committee has a 2004
14 motion --

15 MR. BASTA: And then the next one is the --

16 THE COURT: -- and a --

17 MR. BASTA: Committee's 2004.

18 THE COURT: -- a rule 502(d) motion.

19 MR. BASTA: Right.

20 THE COURT: Which I don't think was objected to
21 either, although people made comments on it. So --

22 MR. BASTA: Do you want to address that?

23 MR. CLAYTON: That is --

24 THE COURT: I'm prepared to grant both of those
25 motions.

1 MR. CLAYTON: Your Honor, Lew Clayton from Paul,
2 Weiss. We did make comments. They speak for themselves.

3 THE COURT: Right.

4 MR. CLAYTON: I see no need to take the time to
5 repeat them, and we don't object to the motion.

6 THE COURT: Is there any way to do -- it's not
7 really a joint defense agreement, because you're both
8 analyzing facts. But is there any way to proceed on the
9 privilege that way too, through an agreement? Are people
10 exploring that at all

11 MR. BASTA: They problem we have, Your Honor,
12 where -- we're trying to approach this as practically as we
13 can. And the problem we have is that because of the mandate
14 and the job of our subcommittee, we have been given the
15 authority to raise claims, prosecute claims, and control the
16 privilege and waive the privilege, which we thought was
17 necessary for us to do our job in a vigorous way.

18 THE COURT: Right.

19 MR. BASTA: Right now, we have lots of work to do.
20 We're investigating. We don't know where these claims will
21 shake out. And we, therefore, don't know who will be on
22 which side of which issue. If we knew that, we could make
23 judgments now, who could be in a joint defense agreement,
24 with whom could we share material, which waivers do we care
25 about? We don't know the answers to those questions and we

1 feel, as fiduciaries, we've got to protect the ability of
2 the estate to maximize the value of its asset, and that at
3 that includes its privilege claim.

4 But we are working to get out these -- review
5 these documents for privilege and get them out as quickly as
6 we can. We don't -- as we sit here today, we don't know yet
7 that there are key, huge, hugely important documents that
8 are privileged. There may be. What we are getting out are
9 documents concerning the facts, and there are -- we've
10 processed over 100,000 of them and turned about 150,000 over
11 to the UCC.

12 THE COURT: So, am I right in summarizing the
13 502(d) motion that the parties have no opposition to it, but
14 they're not entirely comfortable that it works to save the
15 privilege, and so they're still going to go through the
16 privilege analysis?

17 MR. BASTA: That is our view, Your Honor.

18 THE COURT: All right. If the Second Circuit of
19 the Supreme Court rules otherwise, then it's easy.

20 MR. BASTA: Yes, and --

21 THE COURT: But until then, it isn't.

22 MR. BASTA: People have gone through just this
23 analysis in lots of different cases --

24 THE COURT: Right.

25 MR. BASTA: -- and it comes up from time to time.

1 Eventually, someone will push it to the point where we get
2 some clear consensus in the case law.

3 THE COURT: Okay.

4 MR. BASTA: Thank you.

5 MR. SORKIN: Your Honor, Joseph Sorkin, from Akin
6 Gump, very briefly. One, on the 2004 issue, it was not
7 objected to. There were discussions that we had in
8 connection with Paul, Weiss and the various parties that
9 we've identified in the 2004 motion. There were some
10 changes to the proposed order that we have all agreed to.
11 We have a copy and a redline that we'll submit to the Court
12 later today.

13 THE COURT: That's fine.

14 MR. BASTA: And Your Honor, if I may just add, the
15 same changes apply to our order, and we will do exactly
16 that, submit the redline --

17 THE COURT: Okay.

18 MR. BASTA: -- and the final.

19 THE COURT: Okay. And then the last point I want
20 to make, which I think is consistent with how you've been
21 approaching this, you're not at that point yet, but I would
22 like you to make sure that where you can you coordinate any
23 depositions that you're taking so we don't multiply those.

24 MR. SORKIN: We intend to do that, Your Honor.

25 THE COURT: Okay.

1 MR. BASTA: We have been working closely, Your
2 Honor.

3 THE COURT: All right. Okay. Thanks. So, you
4 can submit those orders to chambers, the two from the
5 Committee and the one from the independent director for...

6 MR. BASTA: Your Honor, this is a policy issue,
7 and of course, I can't address it right here.

8 THE COURT: Okay.

9 MR. BASTA: So, we need to go back and have a
10 broader discussion as to what --

11 THE COURT: Okay.

12 MR. BASTA: -- they're prepared to do.

13 THE COURT: That's fine.

14 MR. BASTA: And what we'd propose to do is to
15 advise the Committee after that occurs and we'll let the
16 Court know. And if there needs to be something else, we'll
17 let the Court know.

18 THE COURT: Oh, I understand that. The only point
19 I'd make is that, while I didn't buy everything that Mr.
20 Dizengoff was telling me, I do believe that this is a pretty
21 -- it's close to a unique engagement.

22 MR. BASTA: I think this is a unique engagement.

23 THE COURT: Yeah.

24 MR. BASTA: Mr. Dizengoff called me, and he said,
25 Paul, send me, when this has been done before.

1 THE COURT: Right. So, I think --

2 MR. BASTA: Okay. But you know --

3 THE COURT: So --

4 MR. BASTA: I don't believe, Your Honor, that you
5 normally see a case which requires an investigation of this
6 of this magnitude in this timeframe, with the likelihood of
7 expert valuation testimony, and being able to secure the
8 people who can provide that with conflicting interests. I
9 think it's --

10 THE COURT: Right.

11 MR. BASTA: -- unique and that the structure we
12 did come up with, which does not make it transaction-
13 related, really goes to making sure that there's no adverse
14 incentives.

15 THE COURT: I understand that. On the other hand,
16 I don't think this would be thrown back in Evercore's face
17 in 95-99 percent of their engagements, so...

18 Okay, so I have a number of orders for people to
19 send me. I think there's really only one that you need to
20 socialize with various counsel, which is the first one we
21 dealt with. But that should be -- I think that the company
22 and its professionals can be working, based on the record
23 today, on the assumption that that order will eventually be
24 entered.

25 And then I know I also have a number of orders

1 where there were no objections.

2 MR. BASTA: Yes, Your Honor.

3 THE COURT: And those will be entered shortly, too

4 --

5 MR. BASTA: Thank you very much, Your Honor.

6 THE COURT: -- on the -- you know, the final
7 hearings for the -- that I granted interim relief on and
8 then there were no objections.

9 MR. BASTA: Thanks, Your Honor.

10 THE COURT: Okay.

11 MR. BASTA: We'll see you Monday.

12 THE COURT: Thank you.

13

14 (Whereupon these proceedings were concluded at
15 1:45 PM)

16

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski
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Date: November 16, 2018

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